



SEXUALIZED VIOLENCE IN THE NATIONAL DEBATE

Cross-border observations on India and South Africa

Edited by Melanie Verwoerd & Claudia Lopes

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This publication pays tribute to Anene and Jyoti, and to the many other women whose voices may not have been heard as clearly as theirs. We salute you.

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PREFACE

In 2013 two young women, Anene Booysen and Jyoti Singh Pandey, became household names around the globe. The two women had never met and lived thousands of kilometers apart – Anene, in a tiny town at the southern point of Africa, Joyti, in the massive city of New Delhi, India. On the face of it they shared little in common, except the way they died. Both were gang raped and mutilated to the extent that they died from their injuries.

In a world where reports of rape and other forms of gender-based violence have become so commonplace, the horrific deaths of these two young women, shocked people and mobilised many into action. In India, protests, on a scale rarely seen before, broke out all over the country. In South Africa protests were smaller, yet politicians, civil society and other interests groups all stood together in condemnation of this crime.

Although there was some degree of understanding of why the levels of gender-based violence were extremely high in both India and South Africa, questions around what needed to be done about it and why certain cases received so much more attention than others, still needed answering. The Heinrich Böll Foundation took a commendable step in doing two studies on these specific cases in 2013 – one in India and one in South Africa. Following the completion of the reports the foundation engaged in intensive dialogues with various interest groups in both countries on sexual violence issues and related media, public and political responses. Some of the results of these dialogues are discussed in the introduction written by Claudia Lopes.

However, two years after the deaths of Anene and Joyti, the question arose to what extent the measures that had been implemented following their murders have made any difference in the fight against gender-based violence. In search of answers the Heinrich Böll Foundation approached lawyers, social activists, academics and journalists in both countries. They also asked the participants to indicate what further changes they regarded as necessary in both countries.

This publication contains these experts' responses to the questions. The participants consistently indicate that some positive changes have been made, yet that a lot remains to be done in order to create a world where women can live free from the threat of gender-based violence.

This publication will be insightful to those who want to understand what happened after Anene and Joyti's deaths and what changes are still required. It is a powerful tool for advocacy and also something every politician and policy maker should read.

We owe it to Anene and Joyti as well as all the thousands of rape and abuse victims, to not let their suffering be in vain. With this report, the Heinrich Böll Foundation is not only keeping the memories of these victims alive, but also trying to make a positive change to the achievement of justice and women's rights to be free of gender-based violence.

Melanie Verwoerd

INTRODUCTION

In its preamble, the South African Constitution declares its intention to establish “a society based on democratic values, social justice and fundamental human rights”. Even as far back as 1955, the African National Congress, South Africa’s current ruling political party, along with several other political groups, asserted their ideal of a country free of inequality and discrimination between men and women. Over the years, women’s rights to be free of violence, oppression and discrimination have been emphasized in various legislative frameworks, such as the Domestic Violence Act and the Sexual Offences Act, and in international treaties adopted by the South African government, such as the Beijing Declaration and Platform for Action. These have resulted in gradual but significant advances towards women’s empowerment. However a myriad of challenges remain and women and children continue to bear the brunt of human rights abuses in South Africa.

South Africa is well known for having some of the highest incidences of violence against women in the world. In fact rape is so commonplace that most of society has become somewhat complacent to it. But in February 2013 one story managed to capture the attention of the entire country. Her name was Anene Booysen; she was 17 years old and from a small farming town in the Western Cape province of South Africa. Anene had been gang-raped and savagely mutilated. She died a few hours after being found lying in a pool of her own blood on the grounds of a construction site. Her death made the headlines of all major newspapers in South Africa.

In the months preceding and following Anene’s murder three other cases also made headlines. The stories surrounding their demise were similar – they were all young girls who were subjected to sexual onslaught, died brutal and shocking deaths, and were killed by men known to them and their families. In at least two of the cases, the perpetrators had a history of committing acts of violence against women. All the cases received some level of public appall although none quite to the same extent that Anene’s did. There are however countless other cases that spark little (or no) interest and are fast forgotten. Take the case of Letty Wapad for example. Letty was a 24-year old woman who in March of 2009 was found under a tree in a Kimberley cemetery. She had been gang-raped, stabbed 16 times and cut open from chest to abdomen. Her case was described as one of the most gruesome murders in the Northern Cape’s history yet there were no protests or any public outcry following her death. An article by the Mail and Guardian article titled “the rape that didn’t shake a nation” says it all.

South Africa is not alone in this predicament. Much like us, India’s rates of violence

against women and children are shockingly high, but often widely ignored or taken as normalcy. The same cannot however be said of society's response to the gang-rape and murder of 23-year-old Jyoti Singh Pandey in New Delhi on December 16th. It is said that at no other point in the history of the country had so many people – men and women alike – gathered together to express their outrage at violence perpetrated against women.

The responses to the rapes and murders of Anene and Jyoti raised many questions: Why amongst countless other victims, for example, have these two women become beacons for discourse on violence against women? In countries with such vast levels of violence against women, why do some cases spark public outrage while others do not? Are there specific dynamics and factors that propel certain cases to such prominence and can unpacking these factors lead to important strategic lessons to address violence against women?

In mid 2013, in seeking answers to these questions, the South Africa and the India offices of the Heinrich Böll Foundation partnered on a learning exchange project called "*Sexualised Violence in the National Debate: Cross-border observations from India and South Africa*". The objective of the project was to raise awareness of the perpetuation and public depiction of sexual violence. It also sought insights into factors that trigger social action in order to stimulate thinking on how to enhance social action and political engagement on gender based violence.

The project commenced with the

Why amongst countless other victims, for example, have these two women become beacons for discourse on violence against women? In countries with such vast levels of violence against women, why do some cases spark public outrage while others do not? Are there specific dynamics and factors that propel certain cases to such prominence and can unpacking these factors lead to important strategic lessons to address violence against women?

production of two studies, the South Africa one co-authored by Joy Watson and Vivienne Mentor-Lalu and the India by Urvashi Butalia. This was followed by a series of engagements with civil society during country exchange visits.

The studies analyzed the political, media and community responses to the rape and murder of the two young women. Although the cases were similar the social and political responses differed. In India the government's response to the mass eruptions of social protest was to initially curtail protests rather than respond to what its citizens were calling for. In South Africa, while some marks of social protest were made across the country, it was politicians who took the centre stage. Immediately after the death of Anene became public, numerous politicians descended onto the small town of Bredasdorp - many would argue only to use it as an opportunity for party politicking.

Despite these initial problematic responses, the studies and our consultations revealed that some positive remedial measures did emerge. In India, for example, a new law on rape was introduced which broadened the definition of rape and provided clearer guidelines on the policing of sexual offences. In South Africa, government committed itself to the re-introduction of Sexual Offences Courts and established a job creation initiative in Bredasdorp to address the high rates of unemployment in the community.

Activists whom we met during the country exchange visits were not entirely satisfied that the measures employed were fully considered or sufficient.

In India activists pointed to the fact that, although the new law on rape has broadened the definition of rape it fails to recognize marital rape. It also proposes the death penalty - a punitive measure that the state hopes will deter perpetrators from committing rape but which activists fear will in effect increase the murder rates of women. The law's provision for fast-track courts, while a good intervention to improve the prosecution of rapes cases may be hindered if sufficient resources have not been assigned to their provision say lawyers from the Council to Secure Justice, a non-profit organization that provides survivors of sexual violence with pro-bono legal support throughout criminal proceedings. A police officer whom the HBF delegation met with but who asked not to be identified, notes that a disconnection between the state and its citizens remains. He also believes that the current judicial system is flawed and while fast-track courts appear to be a good thing, the fact is that personnel are not adequately trained and forensics support is limited. While the new law has enforced stricter guidelines on the collection of forensic evidence, some of its stipulations may discourage a rape victim from seeking medical attention according to the Centre for Enquiry into Health and Allied Themes. Testing may only be done through the informed consent of a victim however reporting the rape is mandatory

and any medical doctor who does not inform the police may face up to one year of imprisonment. Psychologists Dr. Achal Bhagat and Ratna Golaknath believe that the states protectionist approach has pushed the discourse on rape back by ten years. Little is being done to address the nuances that underpin violence against women. Mandatory reporting may work in countries where victim protection services exist, say activists, but this is not the case in India. There are limited psychosocial support services for victims and many continue to face stigma and secondary victimization.

In South Africa, the provision for and improvement of support services to victims are ongoing demands by activists. Thus the state's commitment to reintroducing Sexual Offences Courts following the death of Anene was a welcomed initiative as these courts had significantly improved the handling of sexual offences cases prior to their cessation in 2005. However, noting the state's failure to initiate measures related to sexual offences in the Bredasdorp community, the authors of the South Africa study conclude that there are "no quick-fix solutions and strategic thought needs to be invested in the prevention of sexual violence." "Otherwise" they add, "both private and public spaces will continue to be sites of potential danger for women and girls". ENCA reporter Paula Chowles who traveled to India with the HBF South Africa team agrees with this sentiment. In a documentary she produced on this project, titled "two worlds, one fight", Paula says that "while the answer to many complex questions remains elusive, the journey has certainly revealed that women in both South Africa and India are battling with equality issues...and that [these two] nations will only begin to curb sexual violence when women are truly free".¹

The question then is, if the measures that followed Anene and Jyoti's deaths were not fully thought through what impact have they had since their implementation?

Throughout the many encounters we had during the course of this project, no-one is entirely certain why Anene and Jyoti have become the beacons for discourse on violence against women to the extent that they have. Regardless of the many (often cynical) theories shared no one can deny that these two young women left their mark in society. Jyoti's father expressed this sentiment beautifully: "Jyoti has become a symbol. In death, she has lit such a torch that not only this country, but the whole world, got lit up. But at the same time, she posed a question. What is the meaning of 'a woman' [and] how is she looked upon by society...?"²

The question of how women are perceived by society and how these views impact on the level of gender violence was raised again recently. Earlier this year, bus driver Mukesh Singh who was one of the men sentenced for the rape and murder of Jyoti, shared some seemingly deeply ingrained beliefs on a woman's place and role in society, in a BBC documentary called "India's Daughter".

“A decent girl won’t roam around at night”, he said in the interview, “A girl is far more responsible for rape than a boy. Boy and girl are not equal. Housework and housekeeping is for girls, not roaming in discos and bars at night, doing wrong things, wearing wrong clothes. About 20 per cent of girls are good.” He continues, “[w]hen being raped, she shouldn’t fight back. She should just be silent and allow the rape.”³

In the documentary Singh describes that fateful evening. He talks of Jyoti not as if she were a fellow human being enduring insufferable torture at the hands of his brother and his friends, but as though she were an offensive creature that deserved extermination. Devoid of any emotion he arrogantly places the blame of what happened to Jyoti on her. In his worldview, and in those of his co-accused, if women do not “behave” as they “should”, they must bear the consequences even if death is the ultimate sacrifice for this perceived treason.

It is crucial that in all societies opportunities are created to analyse and raise debates about what drives and sustains gender based violence in our communities, whether strategies to prevent and redress violence against women are working, whether new considerations and approaches are needed and what these should be.

To add further controversy, lawyers ML Sharma and AP Singh who represented the group of men accused of Jyoti’s murder had some equally disturbing philosophies. Sharma comments that there is no “place” in Indian society and culture for women. Singh, who is not a stranger to controversy, had stated in a previous televised interview that “If my daughter or sister engaged in pre-marital activities and disgraced herself and allowed herself to lose face and character by doing such things, I would most certainly take this sort of sister or daughter to my farmhouse, and in front of my entire family, I would put petrol on her and set her alight.”⁴

Worryingly the Indian government has heavily vilified the documentary and banned it from being aired allegedly out of fear that it may incite public lawlessness. Yet the good news is that society has not been subdued from talking about it or been afraid to challenge the state on its decision.

Patriarchal and misogynistic views such as those expressed by Singh and by his lawyers, cannot and should not be swept under the carpet. It is crucial that in all societies opportunities are created to analyse and raise debates about what drives and sustains gender based violence in our communities, whether strategies to prevent and redress violence against women are working, whether new considerations and approaches are needed and what these should be.

This is the aim of this publication. In this report, the Heinrich Böll Foundation and a number of leading academics, lawyers, journalists, civil society activists and experts on violence against women, examine how state-driven measures to address violence against women have been implemented. Two years after the gang-rape and murder of Anene and Jyoti we also explore gaps in responses to rape crimes and what further action is required in both countries.

The publication consists of ten chapters, divided into two parts: part one concentrates on the perpetuation and public depiction of sexual violence as well as state approaches to addressing this in the context of South African society; and in part two this is done in the context of Indian society.

Part 1 commences with the study by Watson and Mentor-Lalu as Chapter 1. Chapter 2 provides a deeper analysis of the media's coverage of the Anene Booysen case and whether the discourse in the South African media has changed in relation to gender based violence. In this article, former journalist Heidi Swart explores these questions. In Chapter 3, Bredasdorp community activist, Lee-Ann January describes local measures employed to empower women and address youth development and asks fellow community members and local government representatives what they think has been the impact of these measures in the community since Anene's death. Chapters 4 and 5 pay particular attention to the Criminal Justice System. Post-doctoral research fellow Rita Ozoemena describes South Africa's Justice Architecture in the context of violence against women and regards whether this system undermines women's equal access to justice. In Chapter 5, attorney Sanja Bornman analyses the survivor's experience of using law enforcement agencies and the criminal justice system and considers to what extent interventions to improve those experiences have been successful. Finally, in Chapter 6, Professor Amanda Gouws describes the current public discourse of rape in South Africa and contemplates how a shift in this discourse is required in order for the state to strengthen its response on violence against women.

Part 2 on India commences with the study by Butalia as Chapter 7. In Chapter 8, journalist Smruti Koppikar discusses the marked differences in how the media reports on rape in India since the death of Jyoti while recognising the short-falls that persist. In Chapter 9, lawyer Vrinda Grover, and in Chapter 10, Director Padma Bhate-Deosthali

and Senior Research Officer Sangeeta Rege from the Centre for Enquiry into Health and Allied Themes, delve deeper into legislative changes post the December 16 case.

The publication ends with a reflection by Paula Assubuji, the Human Rights Programme Manager of the Heinrich Böll Foundation, on the successes and weaknesses of current strategies to address sexual violence and where greater efforts are needed to tackle this social ill.

In conclusion, it is clear that addressing violence against women requires significant and concerted holistic and multi-dimensional efforts. Developing legislation will not automatically strengthen a weak criminal justice system nor will it be the catalyst for sensitizing a largely insensitive society to the horrors of violence against women. Nothing will fundamentally change if measures are not backed up and strengthened by the required infrastructure and resources as well as by the social and political will to challenge the discrimination of women and shift gender imbalances. Unless this is done the systemic inequality of women will continue, as will the violence inflicted upon them.

Claudia Lopes

Programme Manager

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Endnotes

- 1 Available at <http://www.enca.com/media/video/checkpoint-ep26-two-worlds-one-fight>
- 2 <http://www.bbc.co.uk/mediacentre/latestnews/2015/storyville-indias-daughter>
- 3 <http://www.hindustantimes.com/india-news/december-16-rapist-blames-victim-says-a-girl-is-far-more-responsible-for-rape-than-a-boy/article1-1322202.aspx>
- 4 Ibid.



PART 1

SOUTH AFRICA



CHAPTER 1

RUPTURING THE NORMS

The social and political response to the rape of Anene Booysen¹

Joy Watson and Vivienne Mentor-Lalu

INTRODUCTION

On 16 December 2012, Jyoti Singh Pandey², a 23-year-old physiotherapy student boarded a bus in New Delhi, India after watching *The Life of Pi* with a male friend. They were accosted by six men who raped and attacked Jyoti with an iron rod, leaving her partially disembowelled and resulting in her death. On 2 February 2013, 17-year-old Anene Booysen, a cleaner at a construction company in Bredasdorp, South Africa³ went out with a group of friends to a local pub. They had some drinks, danced a bit and Anene later left the pub in the company of some of the male friends she had been socialising with. She was found the next morning by a security guard at a construction site, fighting for her life. She had been gang-raped and mutilated and had incurred extensive genital injuries. The doctor who initially treated her described her injuries as the worst she had ever seen. Like Jyoti, Anene had been disembowelled. Six hours later, after naming one of her attackers, she died in hospital.

Both cases received a great deal of publicity and public outcry. Both young women were raped and brutally attacked and both fought bravely for their lives. Both women lived in countries with high levels of violence against women and stark gender inequalities. However, Anene lived in a small rural town and knew her attacker(s), while Jyoti lived in an urban city and her attackers were not known to her.

In India, huge mass protests broke out in the wake of Jyoti's rape. The magnitude of this outcry elicited against an act of sexual violence is possibly unprecedented the world over. Public protests were staged at India Gate and the national parliament. Thousands of demonstrators clashed with police, overturned cars, were shot with tear gas shells and water cannons, and arrested. Similar protests spread throughout the country. According to estimates, thousands of people marched in Calcutta and 600 women marched in Bangalore. Many protesters went on hunger strikes. This was augmented online by social media protests and a petition against the incident signed by tens of thousands. While the state initially attempted to suppress the protests, it eventually acquiesced to the public's call for a reaction to what had transpired. The

Indian prime minister and the president of the ruling Indian National Congress Party not only issued statements but were also present at the New Delhi airport to receive Jyoti's body when it arrived from the Mount Elizabeth hospital in Singapore.⁴ A convoy of more than twenty police vehicles carrying riot police led the ambulance that transported her body to the funeral. With this response to Jyoti's death, India demonstrated to the world its capacity to take a social stand, and its vehement outrage against rape. The One Billion Rising campaign described the social mobilisation in India as a huge breakthrough of consciousness with regards to sexual violence.⁵ The story was featured on the front page of most newspapers and it became a central topic of public discourse.

In stark contrast, in South Africa, a country with a strong and proud history of mass protest the public responses to Anene's rape and death were sporadic and uncoordinated. While the case did not yield significant social mobilisation, it did receive significant political and media attention. Anene's case has since become the exemplar of violence against women in South Africa and is often cited in discourse on sexual violence.

This paper analyses media, political and social responses to Anene's rape and death. Drawing on newspaper coverage, the reactions of politicians and interviews conducted with members of the Bredasdorp community,⁶ it explores whether these resulted in any tangible social transformation. The paper further discusses these responses in terms of South African normative views on sexual violence.

NARRATIVES OF SEXUAL VIOLENCE

Rape has become so endemic in South African society that only the more violent and brutal acts appear to stimulate public attention. Yet it is the everyday acts of violence, such as those acted out within many intimate relationships that create the social conditions that allow the more brutal manifestations.

Each act of sexual violence carries two layers of narrative. The first is the narrative of the person who experienced the violence. Anene, for example, was a young woman who had grown up in Bredasdorp. Her mother died when she was little and she was consequently moved between relatives and foster homes. She lived in a community characterised by poverty and she dropped out of school to find work. Recreational activities in Bredasdorp are limited and many young people socialise in the local pubs such as the one that Anene visited before her attack. It is important to individualise each story in this way. The traumatised subject of sexual violence is always a person with a range of knowledge, experiences, emotions and desires.⁷ It is important to see each victim of sexual violence in this way. To universalise sexual

violence and only talk about the collective narrative removes the specific details of the individual histories. This, in effect, dehumanises the person on whom the violence is inflicted as they become yet another statistic.

The second layer of narrative is located within a community's experience of sexual violence and is indicative of that community's social performance. Anthropological studies have observed that rape is likely to be lower in societies characterised by gender equality, peacefulness and high levels of women's economic power.⁸ This

The question we therefore need to ask is, "What is it about South Africa's specific set of social circumstances that resulted in more than a million contact crimes against women in the last few years?"

means that violence against women should be located within a broader context of gender equity within a society. The high levels of violence against women in South Africa tell us something about the gendered social order at play, about hegemonic constructions of masculinity and femininity, and the underlying patriarchal norms that create the conditions within which such violence can thrive.

Within such a context, rape is highly ritualised. Although it varies between countries and changes over time, there is nothing timeless or random about it. For perpetrators of sexual violence, it is never enough to merely inflict suffering: the

victim and the victim's response to the violence give meaning to the rapist's experience of inflicting injury. The specific set of historical, social and contextual circumstances in operation at a given point in time impact upon and give meaning to the ritual of rape. Perpetrators of sexual violence learn and teach themselves how to act as perpetrators within specific historic communities.⁹

The question we therefore need to ask is, "What is it about South Africa's specific set of social circumstances that resulted in more than a million contact crimes¹⁰ against women in the last few years?" While Anene's rape and murder must be seen in terms of its own specificity, it must also be located within a context of unremitting brutality, violence and sexualised violence towards women in South Africa – a context in which someone needs to be disembowelled before the public sits up and takes note. Even then, South Africa's social and political response to sexual violence is fickle and no guarantee that future acts of sexual violence will receive similar attention. It

is also interesting to note that the rape of Anene captured less public attention than did the act of her disembowelment. This is indicative of the perceived hierarchy of the horror of violence.

SEXUAL VIOLENCE IN SOUTH AFRICA

In the 2011/2012 reporting period, 31 299 sexual offences against women and 25 862 sexual offences against children were reported to the police in South Africa.¹¹ There were 87 191 reported incidents of assault and 57 345 of assault with the intent to cause grievous bodily harm against women.¹²

A study conducted by the Medical Research Council¹³ found that rape had been perpetrated by 27.6% of the sample of men interviewed in the Eastern Cape and KwaZulu-Natal provinces, while 37% of the men interviewed in Gauteng admitted to rape. Many had raped more than once. The men who admitted to rape were significantly more likely to have engaged in a range of risky sexual activity. They were likely to have had more than 20 sexual partners, transactional sex, heavy alcohol consumption and unprotected sex. The study found that South Africa's high prevalence of rape is linked to deeply embedded ideas about manhood. In a Medical Research Council and Genderlinks study of domestic violence, over half of the women interviewed in Gauteng (51.3%) admitted to experiencing some form of violence, while 75.5% of the men admitted to perpetrating an act of violence against a woman.¹⁴

This omnipresent gender violence has resulted in sensory fatigue. In today's society, it is mostly taken for granted that rape will happen. It has become enmeshed within the rhythm of our lives.¹⁵ In the face of some of the worst rape statistics worldwide – including more than twice the number of rapes reported in India – a recent BBC feature described South Africa as being unable to muster up more than a collective shrug.¹⁶

Before Anene's death, there were many similarly horrific incidents of sexual violence, none of which captured the public eye in the same way. Just a few weeks earlier, 16-year-old Charmaine Mare from Mpumalanga, on holiday in the Western Cape, was raped and murdered in Kraaifontein on the outskirts of Cape Town. Her attacker cut off her arms and legs with a bolt-cutter after raping her, and set her body alight. A month following Anene's death, Thandeka Madonsela, a 14-year-old girl, was found dead in a field near her home in Johannesburg. She had been gang-raped and disembowelled in the early hours of a Saturday morning. Yet Charmaine's and Thandeka's stories, along with many others, remain unknown to most South Africans.

LOCATING SEXUAL VIOLENCE IN SOUTH AFRICA'S SOCIAL CONTEXT

In the immediacy of the post-1994 transition to democratic governance, the South African state, spurred on by the advocacy of feminists, seemed to espouse a commitment to addressing gender inequity in South African society. Yet the 2011 Gender Statistics¹⁷ paint a bleak picture. Approximately 14.8% of black women have no formal schooling, in comparison with 10.8% of black men. Men too outrank women in employment, with only 30.8% of black women versus 42.8% of black men, 43.2% of coloured women versus 54.7% of coloured men, 40.2% of Indian¹⁸ women versus 64.1% of Indian men, and 56.1% of white women versus 72.6% of white men, being employed. Most of these women are employed in the informal sector, in low-skilled, low-paying jobs. Statistics South Africa reports that women are far more likely to be unemployed than men across all geographical areas. In 2011, the unemployment rate for women was 5.4% points higher than that of men,¹⁹ and 2.9% higher than the national unemployment average of 24.9%.²⁰

Levels of gender inequity are therefore still very high in South Africa. But with the national gender machinery not performing as it should²¹, and a resurgence of traditionalism and efforts to normalise patriarchal values and institutions (e.g. the introduction of the Traditional Courts Bill²²), spaces for feminist advocacy have changed. It becomes important to understand the nuances of this shift in the political landscape and what it means for women's rights.

SEXUAL VIOLENCE AND POLITICAL RHETORIC

The language of "gender progressiveness" has been employed perennially by the South African state, but a cursory look reveals the extent to which women's lived realities refute this pledge. The manipulation of language for ideological purposes is not a new phenomenon. When used effectively, it creates an emotional response in the listener, a rush in the limbic system that calls on our deepest feelings as human beings.²³ When the media began to make Anene their centrepiece, different voices emerged to express grief and condemnation. Prominent politicians from across the spectrum invoked a language of outrage that suggested the political will to address the social conditions that enable sexual violence. The president issued a strong statement condemning the attack, as did various government ministers, opposition parties, the trade union federation COSATU, the ANC Women's League and civil society groups.

Some of the utterances, such as the suggestion that Anene should not have been out so late at night, problematically interrogated the victim and not the act of rape

itself or those who committed it. Other statements were made in inappropriate spaces, such as the party politicking at Anene's funeral. In conversation with members of the community, we were somewhat taken aback by their less cynical view of the role of political leaders. In their view, the role of leaders is to lead and to respond in empathetic language to the trauma experienced by the community in the wake of an act of sexual violence. But this approval comes with the firm proviso that the words must be backed up with the requisite action to bring about social transformation.

It is right that as a leader to come forward. They must lead, so it was a good thing that politicians came. Does not matter which political spectrum. I don't think that they were opportunistic; they are meant to come. They must not just show their face but they must take things further.
(Interview 1, 24 August 2013)

It was good that they came but they not going far enough and they are not keeping the promises.
(Interview 3, 23 September 2013)

BEYOND RHETORIC – AN ANALYSIS OF SOCIAL AND POLITICAL RESPONSES

GOVERNMENT RESPONSE

In the aftermath of Anene's death, the government invested R10 million in Bredasdorp.²⁴ Most of this has gone to the construction industry as part of a job-creation initiative for young people. While youth unemployment is rife, the initiative did not directly address the issue of violence against women. It certainly was a newsworthy gesture and it successfully captured public attention and seemed to elicit community favour.

Within the community, the investment is seen to have made some difference in job creation, although far from enough. The government's intervention strategy illustrates a clear lack of understanding of the context for sexual violence in the community. It also fails to strategically use this case to inform appropriate and sustainable local interventions to prevent sexual violence and support victims. It is glaringly obvious that, other than this gesture, nothing much has happened. Apart from isolated church initiatives, there have been few opportunities for women to come together and talk about the issues that they face. The Overberg Development Association made an attempt to bring women together, but this did not get off the ground. Feminist NGOs that were once active in the area no longer have a presence

due to dwindling donor funds. From the perspective of one interviewee, activism has dwindled in the post-1994 period and the community of Bredasdorp has become a whole lot more complacent.

There are significantly less resources for women to turn to (in Bredasdorp). After 1994 people became more accepting of the system, but the system failed people. There is a huge gap.

(Interview 2, 24 August 2013)

Bredasdorp is not alone in this predicament. Even in urban areas, support services for victims of gender-based violence are severely underfunded. In 2012, for example, Rape Crisis²⁵ had to retrench all but one of its staff members. In the same financial year, the Western Cape provincial government spent approximately 1% of its R1.3 billion social development budget on victim empowerment, of which only a portion went into direct services for victims of gender-based violence. Substantially fewer funds were allocated to victim empowerment organisations than to organisations working in other welfare sectors.²⁶

The absence of government interventions in Bredasdorp to focus on sexual and domestic violence in the community and its inextricable link to women's equality is a serious omission. With no initiatives beyond job creation, the idea of rape is subliminally naturalised, normalised and trivialised. The community remains steeped in deeply patriarchal values, normative gender roles, and limiting constructions of masculinity and femininity that largely go unchallenged – all the more so because Bredasdorp is a small rural town with entrenched conservative values.

(Violence against women) is how men control the community, to keep women on their place. It breaks women down. It's not a pretty picture. We must still go a long way to educate the community.

(Interview 2, 24 August 2013)

It would, however, be incorrect to suggest that Anene's death did not result in any attention to gender-based violence. The days following her death saw a flurry of activity in the National Council Against Gender Based Violence,²⁷ which had been relatively dormant. It remains to be seen whether the Council will make a meaningful contribution towards preventing gender-based violence and developing a more integrated approach within government.

The second and more significant policy development linked to Anene's death is

the reintroduction of Sexual Offences Courts, first introduced in 1993 as an innovative measure to improve the prosecution and adjudication of sexual offences. In the pilot court, located in Wynberg in the Western Cape, conviction rates improved to over 80% and victims reported enhanced levels of sensitivity in their engagement with the criminal justice system.²⁸ By the end of 2005, 74 Sexual Offences Courts were operating across the country. This resulted in more cases being finalised, improved handling of victims, improved cycle times and improved conviction rates. Despite these significant advances, however, then-Minister of Justice Brigitte Mabandla noted with concern that the proliferation of the Sexual Offences Courts meant that they were better resourced than regular courts, which was seen as an impediment to the realisation of the goals of the Victims Service Charter.²⁹ A moratorium was then imposed on their further expansion. After the moratorium, conviction rates dropped by about 20% and the cycle time for finalising cases increased by about eight months.³⁰

Following Anene's death, a decision was taken to expedite the roll-out of Sexual Offences Courts. Although this is indeed good news, two immediate concerns require monitoring: the development of a legislative framework for the courts and sufficient budgetary resources – which, at a glance, already seem inadequate. The department of justice and constitutional development has estimated that the initial cost will be an estimated R3.8 million per court,³¹ but only an estimated R22 million has been budgeted to launch 22 new courts.³² It is not clear what the consequences of this under-budgeting will be.

Rape is a notoriously difficult crime to prosecute. One reason for this is the patriarchal nature of state institutions and their inability to take a tough stance against rape. Of the total number of sexual offences reported to the police in 2011/2012, only 6.97% resulted in a conviction. The moral of this story is very clear: in all likelihood, a sexual offender will get away with it. Another challenge pertains to police sloppiness when processing evidence. A case in point comes from a commission of inquiry into allegations of police inefficiency in one of Cape Town's largest townships. A medical doctor who co-ordinates a local Thuthuzela Care Centre³³, testified that the police had admitted to losing a number of sexual assault kits they had collected in 2011. The kits were later found dumped in a field.³⁴ The loss of this crucial evidence held far-reaching consequences.

Similarly, community members from Bredasdorp echoed their frustrations with sloppy police work in Anene's case.

There were a major slip-up in forensics. And if they only have one person now, they must have slipped up. That means the people are still out there.

This is not the first time this happened in Bredasdorp where they could not find people who committed crimes.

(Interview 4 & 5, 23 September 2013)

PUBLIC RESPONSE

When Anene's death was catapulted into the public domain nationally, it generated only a sad murmuring of social mobilisation. In Bredasdorp, support groups gathered at the court when the case was heard, an opposition party and trade union representatives led a protest march, and non-profit organisations scheduled workshops and self-defence classes for community members.

In other parts of the country, isolated short-term initiatives sprang up sporadically, including online petitions, a campaign to wear black on Fridays to demonstrate support for ending gender-based violence, protest marches, and silent vigils, one of which was led by the singer Annie Lennox. Many of these initiatives had a hollow ring to them.

Nedine Moonsamy wrote an article in the Mail and Guardian that Anene Booysen's death became symbolic and was used to express moral outrage³⁵. Yet she critiques the effectiveness of these awareness-raising campaigns in the light of South Africa's tacit acceptance of misogyny. Raising awareness is not enough to bring about systemic change. It is often not enough to change individual behaviour either. What remains significant about the response to Anene's death is that, unlike the case of Jyoti, there was no awe-inspiring moment of a nation coming together to demand action against rampant sexual violence.

As horrific as Anene's death was, it did not galvanise a community outcry that would cut across the deep racial and class divides in Bredasdorp. Community members mentioned the underlying racial tensions that emerged after Anene's murder.

*Protestors outside Bredasdorp
Magistrate's Court.
Credit: Mail & Guardian*



Racial issues is reality in our country. Initially not a race thing, but a brutal thing. But part of it was when the name “Zwai” came out. And people in the community did not want to believe that this known person could do it and so came out the story that there was another guy called Zwai and he is a black guy so maybe he did it. People were looking for another culprit and it was convenient to blame someone you don't know – not close to you.

(Interview 4 & 5, 23 September 2013)

There was also racial tensions rising because after Anene there was this coloured guy that stabbed a black guy from Zwelitsha.

(Interview 3, 23 September 2013)



It is also worth noting that most of the social mobilisation initiatives that took place came from feminist or women's organisations seeking to bring attention to the high levels of sexual violence in the country. Although stretched by the lack of funding, these organisations did the best they could to drive protest and awareness-raising initiatives.

The ODA (Overberg Development Association) called women together after Anene's murder – a broad group of women. We tried to get it going and elect a steering committee and then nothing happened – it fell apart. No one wanted to step forward to make it happen. Maybe it was about courage or it was about time. Women were all involved in their stuff: families, work and other organisations.

(Interview 4 & 5, 23 September 2013)

MEDIA RESPONSE

The media, like the politicians, emerged as a dominant voice following Anene's murder. Mainstream mass media have long faced critique for having lost their key purpose – reporting in a fair, unbiased and balanced way on stories of public interest – and accusations of having become profit-driven multi-national corporations. Far too often, it seems that stories are featured on the principle of “if it bleeds, it leads”, employing the tactics of shock and sensationalism to drive up ratings, attract advertisers and boost profits.

A 2011 study conducted by the Tshwaranang Legal Advocacy Centre found that court proceedings related to sexual violence attracted media attention if the rapes met the criteria of being brutal and shocking.³⁶ The study also found that while the brutality of these acts was reported on, this was often devoid of a contextual analysis of gender-based violence. The reporting on Anene's murder followed these trends. Those interviewed in Bredasdorp seemed to think that the media frenzy was directly related to the gruesome and brutal way in which Anene died.

I think it is how it happened and how she was assaulted. It was not strangers who did this to her.

(Interview 1, 24 August 2013)

I think it is how they murdered her: cutting her stomach open.

(Interview 2, 24 August 2013)

The way Anene died it was terrible. What did they use to kill Anene? You can't slaughter someone like a sheep. What was happening in their minds? You would not even slaughter an animal while it is still alive. They cut her while she was still alive.

(Interview 3, 23 September 2013)

The story centred largely around the gruesomeness of it. There are many other gruesome attacks on women, and in Bredasdorp. There were two baby dumpings in that same period and quite a number of murders. It just happened to be Anene and it just happened to be Bredasdorp.

(Interview 4 & 5, 23 September 2013)

Most of the media debate regarding Anene's rape and murder focused on violence against women in isolation, failing to look at the broader social context for women in South Africa and for rural young women in particular. There was very little questioning of the structural roots of this violence. The "women as victims" discourse limited the emergence of a public discussion on how to keep women safe, how to eradicate gender-based violence and how to deal with the constructions of masculinity that makes such violence possible. At a symposium earlier this year held at Columbia University in New York, Helen Benedict observed that "[j]ust about any discussion of women's rights is still seen in the mainstream press as radical, opinionated and biased, not as legitimate news."³⁷

The fickle nature of news reporting was again demonstrated when Anene Booysen's murder was displaced in the media by the murder of Reeva Steenkamp by Oscar Pistorius, her boyfriend and global sports icon, on Valentine's Day, 2013. The media's obsession with Reeva's story is partially explained by his celebrity status. Yet it is clear from the manner in which these two cases were reported that class and race dynamics say much about whose life is deemed of greater value. Beautiful and glamorous, Reeva led the life of an up-and-coming socialite, model and television personality. The media devoted a great deal of attention to her as a person in her own right, with detailed stories about the life she led, her friends and family, her thoughts and views on assorted subjects, what she did on the day before she died, what she ate, and so on. For the media, it seems that Anene Booysen was interesting only insofar as her body was a site for brutality and for the courtroom dramas that ensued after her death. Her thoughts and views, what she did and said, were deemed inconsequential and certainly not newsworthy.

CONCLUDING COMMENTS

It is fair to say that South Africa is at a point of crisis in terms of violence against women. At a roundtable hosted by the Heinrich Böll Foundation, where a draft of this paper was presented,³⁸ a number of important lessons emerged from reflecting on the government, media and public responses to Anene's death.

Importantly, there is a
need to recognise that
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plays within it.

Importantly, there is a need to recognise that addressing sexual violence is a political issue. Current responses do not sufficiently address the structural nature of women's oppression and the role that sexual violence plays within it. Evoking this gendered political framework, sexual violence is clearly both a symptom and also an instrument for women's oppression.

The starting point is therefore to build a political analysis into our understanding of sexual violence and to create feminist spaces to drive this work. This analysis must then inform strategic advocacy in terms of challenging the state to prioritise sexual violence in its policy and budgetary agendas. If there is to be any hope of turning around the country's high levels of violence and preventing further cases

like Anene's, there is a need to capacitate and strengthen feminist endeavours to subvert the patriarchal social norms within which gender-based violence can thrive.

This will also entail the politics of sensitising our society to the horror of sexual violence and eliciting more ardent social mobilisation. While the physical suffering of victims may fade away, the psychological wounds caused by rape rarely heal completely.

Anene's rape and murder and the ensuing political, civil and media responses have not brought any real change to Bredasdorp, according to the community members interviewed. It has not changed how people think about gender, nor has it changed how women experience violence.

All they (politicians) did was the Construction Seta. But in terms of the psycho-social side – how people viewed the case, where women

could openly debate and voice how they feel – that did not happen (in Bredasdorp). People (in Bredasdorp) did not face things head on. After apartheid there was a TRC. The community here did not go through a phase to heal and bandage the raw wound. Many people were in shock but they did not know how to process it. The community was affected but people just go on with their lives.

(Interview 2, 24 August 2013)

There is nothing really that is transforming the community.

(Interview 2, 24 August 2013)

If Anene's death teaches us anything at all, it is that notions of masculinity, the underlying gender social order, and the sexual entitlement of men are issues that require urgent political and social attention. While a comprehensive policy response is required to provide support services to victims of sexual violence, this alone will not stem the rampant tide of sexual violence. There are no quick-fix solutions and a concerted long-term policy response is required. Beyond additional resources, strategic thought needs to be invested in the prevention of sexual violence. Otherwise, both private and public spaces will continue to be sites of potential danger for women and girls in South Africa.

Endnotes

- 1 This paper was first published by the Heinrich Böll Foundation Southern Africa office in July 2014.
- 2 The law on rape in India prohibits the public use of a victim/survivor's. Following her death, Jyoti's father requested that the media use her name to give other victims of rape courage.
- 3 Bredasdorp is a small community in the Overberg region of the Western Cape province of South Africa. The 2011 census reported a population of 15 524 people.
- 4 Jyoti Singh had been moved to Singapore for medical care, but died en route.
- 5 Retrieved from http://en.wikipedia.org/wiki/2012_Delhi_gang_rape#cite_note-158
- 6 The authors conducted separate interviews with five community members from Bredasdorp to gain their insight into violence against women in the community as well as their opinion regarding the rape and murder of Anene Booysen.
- 7 Bourke, J, 2007, *Rape – A History from 1860 to the Present*, Virago, Great Britain.
- 8 Note that the *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (United Nations World Health Organisation, 2013) reports that the region with the lowest prevalence of non-partner sexual violence is South East Asia, with a prevalence level of 4.9%. However, this needs to be interpreted with caution as the lower levels of sexual violence indicated could also partly be attributed to under-reporting.
- 9 Ibid.
- 10 South African Police Services (2012) *Crime Statistics Overview 2011/2012*. Retrieved from http://www.saps.gov.za/resource_centre/publications/statistics/crimestats/2013/downloads/crime_statistics_presentation.pdf
- 11 SAPS Crime Statistics, 2011/2012.
- 12 Ibid.
- 13 Jewkes R, Sikweyiya S, Morrell R, and Dunkle K., 2009, *Understanding men's health and use of violence: Interface of rape and HIV in South Africa*. Medical Research Council.
- 14 Machisa M, Jewkes R, Lowe Morna C, and Rama K, 2011, *The War at Home. Gender Based Violence Indicators Project. Gauteng Research Report*. Medical Research Council and Genderlinks, Johannesburg.
- 15 While South Africa has high levels of violence against women, it is important to note that an estimated 35% of women worldwide have experienced physical and/or sexual intimate partner violence or non-partner sexual violence. Some national violence studies show that up to 70% of women have experienced physical and/or sexual violence in their lifetime from a partner. See *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*, United Nations World Health Organisation, 2013.
- 16 Andrew Harding, *Will South Africans ever be shocked by rape?* Retrieved from <http://www.bbc.com/news/world-africa-20971240>, Accessed 3 September 2013.
- 17 Statistics South Africa (2011), *Gender Statistics in South Africa*. Retrieved from <http://www.statssa.gov.za/publications/Report-03-10-05/Report-03-10-052011.pdf>
- 18 Persons of Indian descent living in South Africa.
- 19 Statistics South Africa (2011), *Gender Statistics in South Africa*.
- 20 *More women struggling* – Stats SA, 4 July 2013. Retrieved from <http://www.news24.com/SouthAfrica/News/More-women-struggling-Stats-SA-20130704>
- 21 The national gender machinery was established following the abolition of apartheid. It comprises of state institutions charged with giving effect to promoting gender equity such as the Commission for Gender Equality. The structure has undergone various reconfigurations since inception and challenges with overlapping mandates and conflict between institutions, amongst other hindrances, has impeded the realisation of its full potential.
- 22 The Traditional Courts Bill was first introduced in 2008 by the Department of Justice and Constitutional Development. It was intended to give traditional leaders power to exercise judicial law within the regions they govern. The draft Bill was met with great opposition by a range of civil society organisations, academics, politicians and community members who declared it unconstitutional, undemocratic and reflective of the apartheid regime. One of the key criticisms of the Bill, predominantly from feminist activists and rural

- women, was that, although it appeared to be gender neutral, women are not afforded equal rights and are often subject to harmful cultural practices under most traditional customs. The Bill was withdrawn in 2011, re-introduced the following year and withdrawn again in early 2014. A week following news of the Bill's withdrawal, the Department of Justice and Constitutional Development issued a public statement refuting rumours that the Bill had been squashed. The Traditional Courts Bill will be reintroduced to the parliamentary schedule following South Africa's general elections in May 2014. Retrieved from <http://allafrica.com/stories/201402211306.html> and http://www.justice.gov.za/m_statements/2014/2014-02-27-trad-courts.html.
- 23 Hustvedt S, 2012, *Living, Thinking, Looking*, Sceptre, Great Britain.
 - 24 R10 million project to benefit Bredasdorp community, 21 April 2013. Retrieved from <http://www.sanews.gov.za/south-africa/r10-million-project-benefit-bredasdorp-community>
 - 25 Rape Crisis is a non-profit organisation founded in the early 1970s in the Western Cape province of South Africa. It was the first of its kind and continues to be a leading organisation offering specialist services to victims of sexual offences. The organisation is actively involved at Thuthuzela Care Centres and the Sexual Offences Courts.
 - 26 Bhana, K, Lopes, C and Massawe D, 2013, *Shelters Housing Women Who Have Experienced Abuse: Policy, Funding and Practice: Profiling Three Shelters in the Western Cape*. Heinrich Böll Foundation, Cape Town.
 - 27 The National Council Against Gender Based Violence is located within the Department of Women, Children and People with Disabilities, and tasked with managing government's response to addressing gender-based violence. It includes line officials from across different government departments as well as civil society organisations working to combat gender-based violence.
 - 28 Report on the Re-Establishment of the Sexual Offences Courts, Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters, Department of Justice and Constitutional Development, August 2013.
 - 29 The Victims Charter, formally known as The Service Charter for Victims of Crime in South Africa, is a legal framework established in 2004 to protect the rights of victims of crimes. These relate to the right to be treated with fairness and respect, the right to offer and receive information, the right to protection, the right to assistance, the right to compensation and the right to restitution.
 - 30 Report on the Re-establishment of Sexual Offences Courts, Ministerial advisory Task Team on the Adjudication of Sexual Offences Matters, August 2013.
 - 31 Ibid.
 - 32 Report by the Department of Justice and Constitutional Development to the Select Committee on Women, Children and Persons with Disabilities, 14 August 2013.
 - 33 Thuthuzela Care Centres are specialist facilities for victims of sexual offences. The Centres are located in a number of public hospitals and work closely with the police, courts and other victim support services to facilitate the process of reporting and prosecuting cases of sexual offences and to prevent the secondary traumatising of victims.
 - 34 Kate Stegeman, *Bribes and bungled rape, murder cases: Khayelitsha police under fire*, 3 February 2014. Retrieved from <http://www.dailymaverick.co.za/article/2014-02-04-bribes-and-bungled-rape-murder-cases-khayelitsha-police-under-fire/#.U0z7on9bw7k>
 - 35 Nedine Moonsamy, *No more gender-based activism*, 22 February 2013, <http://mg.co.za/article/2013-02-22-00-no-more-gender-based-activism>.
 - 36 Press release issued by Tshwaranang Legal Advocacy Centre, 6 December 2011.
 - 37 Lauren Wolfe, *The media and violence against women: A conversation with Maria Hinojosa*, 14 February 2014. Retrieved from <http://www.womenundersiegeproject.org/blog/entry/the-media-and-violence-against-women-a-conversation-with-maria-hinojosa>
 - 38 Roundtable on Sexualised Violence in the National Debate hosted by the Heinrich Böll Foundation, Cape Town, 14 November 2013.

CHAPTER 2

SEXUAL VIOLENCE & THE SOUTH AFRICAN MEDIA

Reflecting on the Anene Booysen case

Heidi Swart

INTRODUCTION

The extensive media coverage of the rape and murder of Anene Booysen was a unique phenomenon in the history of the South African press. Never before had this type of heinous crime against a young, unknown girl from a poor family in a small rural town received such media attention. In all probability, it never will again. There is good reason for this, woven into the laws that govern all media. And these laws are not isolated within the newsroom; they are fed and in turn feed unspoken and even cruel societal norms, perceptions and sentiments in a vicious cycle that ultimately devours the rights of the poor and the marginalised.

So, what are these laws that determine what is and is not news? How did they influence, if at all, the South African media's coverage of the Anene Booysen case, and the issue of rape in general? Let's take a look.

THE LAWS THAT GOVERN THE MEDIA

Law #1: Stories must be in the public's interest, interesting to the public or, if you want to hit the jackpot, both

A very basic prerequisite for placing a story in a newspaper is that it should either be in the public's interest (people should know about it for their own good) or interesting to the public (the information is useless, but people are interested in it anyway). Preferably, a story should contain both elements.

An example of an interesting story that really had no effect on larger society was a whale breaching and landing on a sailboat, an event captured on film and appearing on the front page of a Cape Town newspaper a few years ago. An example of a story that is somewhat less interesting but affects the public would be an article on road traffic safety, increasing taxes, or a drop in the interest rate. Not as likely to make the front page, but if a whale doesn't jump onto a boat, it'll do for a lead story; the information is in the public's interest – it will affect many or most people in some significant way.

Law #2: Push the panic button (and frighten as many people as possible)

As mentioned, the ideal story is both in the public's interest and interesting to the public. One of the best ways to fulfil both of these requirements is to scare the marrow out of people's bones. A shark attack is perfect. It frightens the life out of would-be beachgoers and has all the drama of a Hollywood production: an unsuspecting, innocent victim, a big bad monster, blood, guts, gore and, if it has a happy ending, a hero rescuing the mangled swimmer despite the risk to his or her own life. If the victim dies, that's probably better. The more you can frighten your readers, the more likely they are to buy your paper or go to your website. People want to see what dangers lurk in the dark, what lies just around the corner, waiting to attack, be it an imminent interest rate hike or something more primal and familiar like a wild animal. They want the relief of knowing that they were not the ones to be caught and eaten so unceremoniously, and they want to find out if the newspaper can give them any information that would prevent them from becoming the victim. This is the belief that governs the newsroom. Whether it is true or false is of no consequence.

Simply put, a story about a shark attack appeals to a wide range of readers. Anyone – irrespective of age, race, background, gender or culture – can be attacked, as long as they venture into the ocean. Most of us can identify with the instinctive fear of being devoured by a 6-metre muscle-submarine with dead black eyes and rows of sharp teeth that can tear you apart as easily as if you were an overcooked chicken.

And that also brings us to the next law:

Law #3: No guts, no glory

As in the case of the shark attack, it is always good to have some spilt blood. Violence sells. Vicarious pain sells. So, the media offers it. As with all of these laws that govern the media, there may be a host of sociological, psychological, anthropological and evolutionary theories about their origins and merit. But this is of no concern in the newsroom. All you need is blood.

But let us return to Anene's story, and to just how these three laws may have interacted to influence media coverage thereof during the normal course of things (in other words, had Jyoti Singh Pandey not suffered a similar fate in India prior to Anene's death).

Anene's death was clearly no shark attack. It was sensational in that it was brutal. But it was of no interest to your average middle-class to high-income media consumer. Anene was just one of thousands of women in low-income areas affected by violence every day. Research tells us this. Even the police cannot hide it by cooking their statistics. The only type of paper that Anene's story may have made headlines in under

normal circumstances is a tabloid newspaper. And why would it have appeared in such a paper? A normal rape case would probably not have been of much interest to the tabloid audience, for the same reasons that many stories, such as those about HIV and Aids, road traffic accidents, and most violent crimes, have lost their appeal: it happens every day in South Africa. It has become a fact of life. It is not new, so it is not news. Unless it is bloody and gory and, preferably, accompanied by a photograph of the damage.

Because Anene's murder was so brutal, it may have made a good front-page lead for a tabloid, even if the events in India had not occurred. The problem is so-called decision makers – people who can change laws and sponsor interventions – do not often read these papers. So, despite being the top-selling cash cows of the print industry, often compromising for the financial losses of more esteemed newspapers within a media house, tabloids are arguably the least influential. As an editor referred to the Daily Voice, a tabloid publication by Independent Newspapers, it is, quite simply, “smut”.

However, brutality is not the only thing that interests media consumers. There are a few more laws to consider, laws that did not count in Anene's favour.

Law #4: Play the celebrity card

Celebrities are even more valuable to newspaper circulation than shark attacks, earthquakes or deadly viruses (such as Ebola). For one, they are always interesting. Unlike stories of motor vehicle accidents or rape, no one ever tires of celebrity gossip. Celebrities are gold: they have a magical ability to capture the public's attention, even if their lives have absolutely no direct impact on the Jones' daily routine. Again, although the media does not necessarily understand the psychology behind this, it does not let this tendency go to waste.

And this is exactly what happened. Anene was fast forgotten when model Reeva Steenkamp was shot dead by the Olympic athlete and South African sweetheart, Oscar Pistorius. This had all the makings of a soap opera: a beautiful, young rising star and her tragic demise, a successful athlete and his downward spiral. Everyone loves a hero, but they love a fallen hero even more. Anene was no rising star, nor royalty, nor the victim of a glamorous romance gone wrong. The ID photograph of her that circulated ad nauseam was anything but glamorous. Surely, in this day and age of selfies, someone would have had a better picture of Anene somewhere? Or did we not really care what she looked like?

So, if Anene was not glamorous enough to warrant attention, what could have brought on the media hype? It was not the next law.

Law #5: Cash in on the numbers

Another thing that the media believes its consumers to be interested in is numbers. Big ones. Size matters. Billions of rand lost through electronic funds transfer fraud. Thousands of square kilometres of forest destroyed. Hundreds dying of a deadly disease.

For some reason, perhaps because we believe that the plight of many outweighs the plight of one, newspapers do not easily take notice of small numbers (unless, you guessed it, they involve celebrities or some gory bits). But the general rule is this: the more zeros, the better. If half a million people die in a tsunami, it's news for months. If a fisherman gets swept off a rock by a freak wave, it's news for a day. A raging crowd burning the streets and waving banners is something that makes the media sit up. One man with a poster stumbling down the street is simply a ranting lunatic. Nietzsche's warning that madness is rare in individuals but par for the course in groups is not really something that journalists and editors take heed of.

That's simply how it is. A massacre of faceless persons takes precedence over a murder of one person. Unless, if you'll have observed the trend thus far, the person murdered was a celebrity, known by millions of people. Here, numbers can cancel each other out. Stories can compete on a quantitative basis. Anene could not compete with these numbers.

Thus, one can reasonably conclude that none of the laws discussed thus far did much to get Anene to page one.

But in Anene's case, something changed that meant another important rule could come into play. Enter the horrific murder and rape of Jyoti Singh Pandey.

Law #6: News must be new

This is an important one, and can influence all the other laws. No one cares about a shark attack that happened 10 years ago. Actually, yesterday is also too late. That's because once too much time has passed, the scoop has been taken. The newspapers and online news sources have beaten each other to every single angle on the story, and the competition is over. The winners, the losers, and the also-rans have been established. The porthole to glory is closed.

News that is new can also be an ongoing issue, such as pollution, rape, corruption or bad service delivery. But for an ongoing issue to enjoy media coverage, it must be coupled with a recent event. An extraordinarily big oil spill that has just occurred, a convention on global warming, a public uprising (as happened in Jyoti's case), a service delivery protest in which the mayor's house was burned down, the anniversary of James Dean's death, and the like. This also means that the local irrelevance of a



story (*Law #1* about the interest of the readership is at play here) can partly be ignored, given that the issue is trending internationally.

Newspapers like to use this law to justify placing local content that would otherwise not have enjoyed much attention. It's trendy overseas, so let's do it here. And this is exactly what the South African media did. Because editors and journalists use this law, they could bring Anene to centre stage.

How? Let's backtrack.

By comparison, Indian society's reaction to the rape and murder of Jyoti Singh Pandey dwarfed the South African public's response to the later rape and murder of Anene Booysen. Large-scale protests swept through India like an Arab Spring, and the Indian Prime Minister awaited Jyoti's casket when it arrived at the New Delhi Airport from the hospital in Singapore where she had died of her wounds.

By comparison, the reaction in South Africa was muted. President Jacob Zuma issued a statement, and a few low-key politicians attended Anene's funeral. The uprisings in India resembled a large-scale South African service delivery protest.



*Western Cape ANC leader Marius Fransman, and other official dignitaries, lead a protest march in Bredasdorp.
Credit: Cape Times*

Water and lights have had a lot more attention from South African communities than rape. Thus, against a background of anger and mass action in India, the South African media saw the gap and reported all it could on South Africa's so-called public uprising, likening it to India. Upon closer inspection this was an exaggeration, if not a farce. This farce is easily created. You did not need a thousand, or even hundreds of protesters to arrive at Anene's funeral to turn it into a news story. There's a very simple trick to this, called fudging. This is how it works:

When you, as a journalist, attend a protest or a public gathering, there is nothing more embarrassing than a no-show: a small crowd turns up, and you look like an idiot when you return to your editor empty-handed. The editor is angry, because you convinced him or her that this was a story, and all you brought back was the mud on

your shoes and a dent in the company fuel budget. But he or she also has a dilemma now: the deadline is looming and it does not care that half of the neighbourhood chose to watch the cricket rather than schlep out onto the streets with pitchforks and banners. What to do? It's simple. Get a picture of two or three angry protesters (make sure you get their placards in the shot), get a few angry quotes, and replace "thousands of protesters" (the number you really wanted) with "scores of protesters" in the text. And just like that, you're cooking with gas.

This brings us to the next question. If Anene's story was fudged, could her death have had a lasting impact on media coverage of rape in South Africa? Was it truly a turning point?

To find out, you would have to gather some solid empirical evidence by doing a comprehensive survey of all publications to establish just how many and what type of articles about rape were published in the year since Anene's death. One would have to look at the quality, content, and length of such articles, ideally. You would have to do a similar survey of such articles published the year prior to her death. Then you would have before and after photos to compare. If you really wanted it to be accurate, you could do the survey starting a decade before her death, and continue with that survey for another decade after her death, in order to identify long-term trends. It would cost a fortune. But there is another much cheaper, faster way to investigate the issue. It may not be as accurate, but it will give you some idea of the situation.

Firstly, there is good old-fashioned observation. During the course of my regular consumption of media over the past year, reporting on the rape and sexual assault cases of poor, unknown women appears to have taken the usual back seat. That would be my answer if I were asked the question in court. Of course, the prosecution would ask me for my survey results.

But I had another encounter lately that was far more revealing. I suggested to an editor of a well-known online publication that I provide them with a piece dealing with the content of this very essay. Since the anniversary of Anene's death was around the corner, I thought that would be enough to get the piece published, based on *law #6*. Ironically, this story could now also be justified under *law #4* (*Play the celebrity card*, if you will recall), since Anene has now become somewhat famous. Newspapers love celebrities and anniversaries. Two laws waxed.

I was sorely mistaken.

The first thing the editor asked me was: "How are you going to make it relevant?"

I knew that this particular editor was sympathetic to this cause, and was simply doing her job by playing devil's advocate. Nonetheless, I felt the irritation tear up my

spine like a pack of relentless, rabid borer beetles hell-bent on devouring my cranium as well.

I thought, “Really? After all this hype about Anene that, incidentally, was driven by editors, are they *still* going to make journalists and activists jump through hoops to obey even more of their laws when it comes to this topic? Would they have done the same if I had offered them a column about Reeva, or about the most recent million stolen by some high-flying politician? Perhaps I should whip out my calculator and fudge some ridiculous statistic about how many women are raped every thirty seconds? Shocking enough?” (That would be *law #5: Cash in on the numbers, and a bit of sensation with law #3: No guts, no glory.*) This brings us to the final law.

Law #7: At any time, on the whim of an editor or journalist, any of the laws can be ignored

This is perhaps the most tragic facet of the news machine. Those who control what leaves the newsroom often decide, not entirely based on reason or even their own laws, what their readers want to read. If the editor is “not feeling it”, the story is dead in the water. If that is not undemocratic, what is?

Where does all of this leave us as a society? We know where it left Anene: nowhere.

THE MEDIA & ADVOCACY

If we really want media coverage to change, to take an interest in the individual, and not only the masses, to take an interest in women, in peace, in children, in non-violence, civil society will have to work hard. If we do not, nothing will change. We cannot afford to do nothing.

The good news is that most journalists are not insensitive creatures who just want a scoop. Not all are fatigued, bored, and desensitised. The fact is many simply do not know how to take stories like Anene’s

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*An artistic rendition of Anene Booysen.
Credit: Daily Maverick*

and turn it into something bigger. What is more, every morning in the newsroom of a daily newspaper, a journalist has to sell a story to an editor. They sit around a table and decide what will go into the paper. An editor, in the best-case scenario, may have a soft spot for vulnerable persons in society, and may have the know-how to turn their stories into something that will make the public sit up and listen. Usually, however, this is not the case. Unfortunately, many editors have the attention spans of fleas, or vastly overestimate their own intelligence. Others are out to build a celebrity status for themselves.

The bottom line is this: the onus is on media liaison agents in the civil society sector to understand how the media works, and to exploit it using its own laws. Organise a protest with “scores of people”. Constantly alert the media to heinous, gory crimes. Keep reminding them that this is ongoing. But, most importantly, civil

society cannot afford simply to send out press statements to whoever will listen: we need to make friends with journalists and editors, learn from them, and teach them in turn.

CONCLUSION

It will take time and money before all of society realises that rape and unhealthy power relations between men and women not only destroy the lives of females, but is a tragic occurrence in the lives of men as well. Only advocacy and educational prevention and awareness efforts can bring this change over time, and lead to a real protest, a real public outcry for victims like Anene. We don't know when we will have reached a critical mass so that this can be achieved; we don't know when the war will end. We only know that we cannot afford to give up.

Ultimately, most of us want things to be better. We want a better society without violence, disease and tragedy. But, unless civil society builds relationships with sympathetic members of the media and keep rallying the broader public, stories like Anene's will remain lost at the bottom of page 23.

CHAPTER 3

SOCIAL UPLIFTMENT IN HONOUR OF ANENE BOOYSEN

Lee-Ann January

Following the death of Anene Booysen, government invested R10 million in Bredasdorp as part of a job-creation initiative for the construction industry. In the South African study, authors Joy Watson and Vivienne Mentor-Lalu remark that the initiative was a “newsworthy gesture” which had “successfully captured public attention and seemed to elicit community favour”. However, it did not directly address what had happened to Anene. We asked Bredasdorp community activist Lee-Ann January what she and other members of the community believe has been the impact of the job creation initiative and whether any other measures have been employed to address violence against women in the community following Anene’s death.

“I am enthusiastic about my future and I feel positive. I want to show men that plumbing is not just a job for them, but women can also master this trade,” says Faren Stevens, an ambitious 22-year-old student who’s currently excelling through the Construction Seta Learnership Programme initiated by Dr Blade Nzimande (Minister of Higher Education) in partnership with the Cape Agulhas Municipality. This programme was created to uplift the community, to eradicate poverty and to challenge the high unemployment rates particularly amongst the youth of Bredasdorp. Today, two years after this project was launched, more than a hundred unemployed youth have received training in the Construction field. According to Skills Development Facilitator Sonja Lakey, 80 students have thus far completed their training and 39 of these students are women. “The skills project created opportunities for all, specifically those that didn’t have experience before. Now they have better chances to access the job market,” says Eve Marthinus, Speaker of the Cape Agulhas Municipality.

The Cape Agulhas Municipality is currently building the Anene Booysen Skills Centre. The centre is situated in the heart of the town and its main focus is to run these construction learnership programmes. According to the Department of Higher Education it is estimated that overall 700 unemployed learners will benefit from this

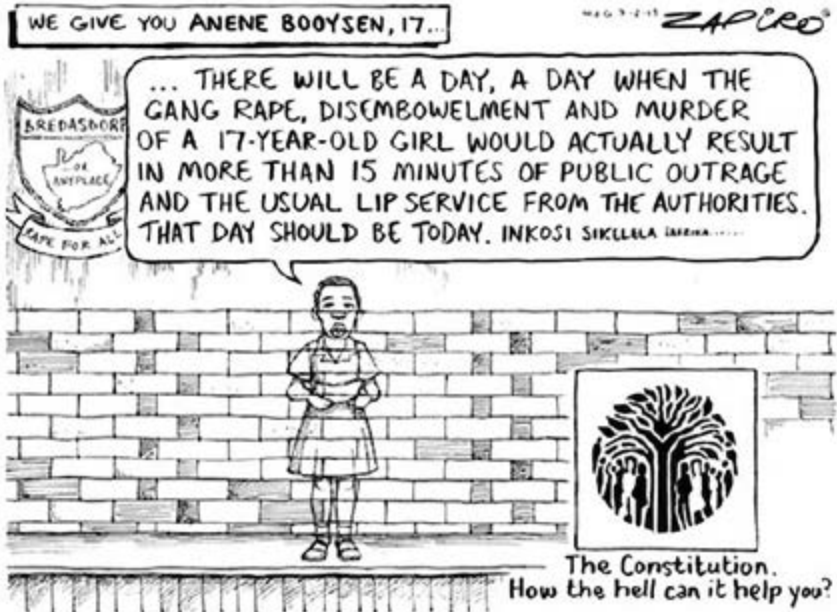
project. This learning opportunity includes short skills programmes, learnerships and apprenticeships. Nombasa Mlasi-Musewe, Human Resource Manager at Cape Agulhas Municipality says that this project is positively reshaping Bredasdorp into a place of great achievement. She is proud of the learners who have completed the training and feels that only good things lie ahead for the community – “this is only the beginning” she says.

Not far from the Skills Centre is the Tehillah Drugs Rehabilitation Centre which was opened in 2013 as a substance abuse outpatient clinic. Substance abuse

and the abuse of women and children often go hand-in-hand. The clinic has been playing an active role in the social transformation and rehabilitation of the youth. “I lost my children last year because of tik, and it made me realise that I failed them as a mother. I have been clean for six months and I’m struggling to make a living and change my life for the better so that my children and I can have a better future”, says Jecintha Alexander, a 36-year-old single parent. “I always dreamt of becoming an interior designer and maybe record my own music album someday”, says Alexander, “Drugs is killing our society, we have to have activities that stimulate the youth. Tehilla has been doing wonders for me. I feel one need to support each other to spiritually grow in this world.”

The safety and security of women has been foremost in the minds of the community since Anene’s murder. To empower the women of Bredasdorp, self-defence classes were organised for women and a Community Neighbourhood Watch was established. A house of safety for abused women and children has also recently been erected. These are great starting points but more still needs to be done. “We as a community should develop programmes for younger women especially between the ages of 12 to 15 years that will empower them, educate them and build their self esteem” says community leader and member of the Neighbourhood Watch, Pastor Minnie Jantjies. Pastor Jantjies also believes that the judicial system is failing society and that women need to familiarise themselves with the law and actively participate in community initiatives and organisations. Sarita Lewis, Community Development

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Worker believes that further efforts need to be geared towards youth development and building greater social cohesion in the community such as through the arts, music, dance and sports.

There is no doubt that the Anene Booysen case has shaken the community of Bredasdorp and it remains fresh in everyone’s minds. But the town is moving forward and human development has been the key to this. The community has grown immensely through the skills development project, through the support services of the rehabilitation centre, and other projects that have been implemented along the way. “I feel Anene Booysen were never granted this opportunity to complete her degree in Construction,” says Faren Stevens, “and in her memory I am reaping the fruits of education and building my future”.

CHAPTER 4

CRIMES AGAINST WOMEN IN SOUTH AFRICA

Is the justice system fair?

Rita N. Ozoemena

INTRODUCTION

The incidence and prevalence of crimes committed against women and children have reached endemic proportions in South Africa. Government and civil society agree that it is a significant problem. In the aftermath of the gang rape and death of Bredasdorp teenager, Anene Booysen, President Jacob Zuma declared that “such crimes have no place in our country”¹, yet the pain that victims have endured, is not always adequately redressed through the justice system and as such victims are failed in a very cruel way. It is often at this point that questions regarding the efficiency, effectiveness and fairness of the judicial system get raised. The extent to which justice prevails and perpetrators of these crimes are made to face the law reflects the morality of society and the value it places on human dignity, equality and freedom. These are the foundational values entrenched in our law and in the Constitution. Section 9 (1) of the Constitution states that everyone regardless of gender, race, age, religious belief or status is “equal before the law and has the right to equal protection and benefit of the law”.

The process of transformative constitutionalism embarked upon almost two decades ago paved the way for a re-engineering of the South African society in which all persons are able to claim these rights in law. To realize this right, other critical actors are involved in making sure that citizens are protected. These actors form the justice architecture which includes the Police, the Prosecuting Authority and the Judiciary. Confidence in the system is critical yet many South African citizens perceive the justice system as not being fair to all particularly within the context of women's rights abuses. Is this the case and if so what are the factors responsible for the non-delivery of justice to women who disproportionately bear the brunt of sexual crimes in this country?

ACCESS TO JUSTICE AND THE SOUTH AFRICAN JUSTICE ARCHITECTURE

Access to justice underscores not only the letter of law but the fairness that is inherent in the system. The proximity of the police station and courts, the simplicity of procedures for reporting crimes, in addition to the sensitivities of personnel as well as the efficiency of court processes constitute basic elements for accessing justice. Within this architecture, the police are ordinarily the first point of contact. Once it has been determined that there is an answerable case, the department of public prosecution steps in. Finally, how the victim's pain is addressed is played out in the court of law.

THE POLICE

The South Africa Police Service (SAPS) is charged with combating and protecting citizens from crimes. The Constitution provides the enabling authority for the SAPS by stipulating the following:

"...the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law".²

To give effect to their responsibilities of upholding and enforcing the law in respects to gender based violence, the police has within its services, a unit dedicated to sexual crimes referred to as the Family Violence, Child Abuse And Sexual Offences (FCS) Unit. The FCS Units are found in most districts in the provinces and have been responsible for the investigation and conviction of sexual crimes committed against women and children. Despite being at the forefront of the justice machinery, serious contentions have been had on the police service's capacity to deal with sexual offences. Given the high rates of sexual crimes in the country, the police service is inundated with cases. An over-burdened system coupled with insufficiently trained personnel is a major challenge to accessing justice.

THE PROSECUTION

The prosecuting authority is largely charged with examining the facts of criminal cases and with defending the interests of persons affected by such crimes. Undoubtedly, the role of the prosecution in ensuring that justice is done is critical to the efficacy of the rule of law in the country. In 1999, the National Prosecuting Authority (NPA) established a Sexual Offences and Community Affairs Unit (SOCA) with a broad objective to "eliminate all forms of gender-based violence against women and children".

The sexual offences section forms part of the four sub-units of SOCA with a focus on increasing conviction rates, addressing victim trauma and ensuring prosecution efficiency. The Department of Justice and Constitutional Development's National Policy Guideline for Victims of Sexual Offences³, developed in 1998, stipulates various protocols towards the ethical "treatment and protection of victims and witnesses in the criminal process" and recommends that crimes of a sexual nature are handled by specialized prosecutors.

THE COURTS

The judiciary forms part of the backbone of the justice architecture because ensuring that victims of sexual crimes have redress for the violence committed against them resides on the authority of the Courts to convict the perpetrators of sexual crimes. In other words, the buck stops with the courts. Given the high prevalence of sexual violence in South Africa though, matching the demand for justice with the human capacity to deal with it is highly problematic.⁴

From the above, it is clear that the South African justice architecture is functional but it is not without constraints. Gaining an understanding of the extent of the problem is imperative in examining the fairness of the system.

SEXUAL OFFENCES AND OTHER CRIMES AGAINST WOMEN IN SOUTH AFRICA

Violence against women has been an ongoing problem in this country for many years and it is commonly known that South Africa has one of the highest incidences of rape in the world. According to a study by the South African Race Relations Institute, in the period 2010-2011, 181 sexual offences were being reported every single day across the country.⁵

Violence associated with sexual crimes can be extremely gruesome such as the 1994 case of Alison Botha, who like Anene Booysen was gang-raped and disemboweled. Despite also having been stabbed multiple times, Alison survived.⁶ While Alison had not known her assailants not all cases of violence against women are nameless or faceless crimes. Most often, incidents of this heinous crime are committed by persons known to the victim. Take the case of Ina Bonette who in 2012 was gang-raped and severely tortured by her ex-partner Johan Kotze with the help of three accomplices. Kotze was later dubbed the "Modimolle monster" by the media.

A 2013/2014 survey conducted by Statistics South Africa found that in most sexual assault cases, the perpetrator was known to the victim; and in 50% of the sexual crimes reported, these had taken place in the home⁷. The home is a place where people

should feel the safest but for many women these spaces are devoid of dignity, stability and freedom.

The extent to which rape is so prevalent in South Africa may stem from the patriarchal nature of our society. A common theme running through a perpetrator's perception of rape is that it's one of entitlement. This is according to activist Mbuyiselo Botha who has conducted countless interviews with perpetrators of sexual violence during the course of his work on gender based violence.⁸ In other words, men rape because they feel they have the right to; and they believe that they can get away with it. Some of the statements made by men regarding rape to Botha included:

"This person is my wife. I have a right to her body."

"When she says no, she means yes. She wants to pretend she is hard to get. I must try harder to get her";

"If I am arrested, there will be shoddy detective work. If there is prosecution, I will go free".

These kinds of statements depict a society in which some of its citizens do not believe in the values of human dignity and moral rectitude.⁹ It is also an indication that people believe the justice system is deficient and can be manipulated.

IS THE JUSTICE SYSTEM FAIR TO WOMEN?

Public trust is a huge component of the justice system which is severely undermined when race, class and money are intricately linked to the fairness or otherwise of the criminal justice system. Among the more socially marginalized population of South Africans, there is general concern regarding the fairness and impartiality of the court. It is often felt that should two people have committed identical crimes but be of different races, say one person is black and the other white, it is the black South African who is more likely to be found guilty.¹⁰

Within an overburdened and under-resourced criminal justice system, it is very possible for defendants who have the adequate financial means to speedily resolve their cases. In some instances they may also get off quite easily. Two highly publicized criminal trials in South Africa, those of Shrien Dewani and Oscar Pistorius, are excellent examples of this. Both men were accused of murdering their intimate partners and both were wealthy enough to employ the services of private investigators and forensic experts. These two cases have laid bare the extent of the deficiencies in the system

and how the rich have the means to hire experienced defense counsels while (often) the poor, black majority, contend with what can be best described as sub-standard judicial process.

In fact, the idea that the system is prone to manipulation by male perpetrators should be a major source of concern for all actors in the justice architecture. Simply put, it serves as an indication of the inability of the system to engender fairness. The broad sense of gender justice denotes a society that takes into account the vulnerabilities of women, children and other marginalized groups to ensure that substantive equality is achieved. Hence, the end product of equality is justice.¹¹

The reality is however that it is women who most often suffer immeasurably from the procedural and distributive unfairness of the system. For the many victims, particularly those from rural or urban townships and poorer areas, who walk the same streets and enter the same transport as those who perpetrated violent crimes against them, the system is not fair. For Zoliswa Nkonyana, a 19 year old girl who was gang raped and murdered for being a lesbian, and whose case was postponed more than 40 times over a 5 year period, the justice system was not fair. When the Judge presiding over the case of Eudy Simelane, a former Banyana Banyana female soccer player who was stabbed 25 times in the face; gang-raped and left to die, could not hide his discomfort in using the word 'lesbian' and asked the prosecutor if there was another word he could use instead, the justice system was not fair.¹²

ENSURING A FAIR JUDICIAL SYSTEM

The intimate nature of the crime of rape often presents difficulties in reporting it, the manner in which it is prosecuted and how perpetrators are brought to justice. For the year 2011/2012, 64 514 sexual offences were reported across South Africa and out of this number, only 6913 cases were finalized – a mere 11 percent of the reported cases. The actual conviction rate for that year was 6.9 percent or 4 500 cases.¹³ The low conviction rates and often lengthy and delayed court battles, including prejudicial

The broad sense of gender justice denotes a society that takes into account the vulnerabilities of women, children and other marginalized groups to ensure that substantive equality is achieved. Hence, the end product of equality is justice.

attitudes by those meant to enforce the rights and protection of citizens, proves the difficulty of dispensing fair and equitable justice. The Oscar Pistorius trial Judge, Thokozile Masipa, provides a notable perspective in her ruling of one of the most publicized criminal trials in South Africa. She said that “society cannot always get what they want. Courts do not exist to win a popularity contest but to dispense justice”.¹⁴ It is true that the justice system serves to dispense justice, but in the face of empirical evidence that many are not able to access free and fair justice, then the justice system is a failed one.

One of the most important components in the judicial process which can ensure a fair outcome for a victim is a confident, well-resourced and sufficiently paid police service. Enhanced and regular training as well as clear policy guidelines will inspire public confidence in these stakeholders. The realization that crimes against the state have a human face should act as a strong moral and legal force to restore the dignity that has been taken away by criminal acts such as the murder and rape of women.

Secondly, court efficiency is an imperative to guard against unnecessary delays in the judicial process. Steps should be taken to ensure a speedy resolution of cases. The re-introduction of Sexual Offences Courts in this country is a step in the right direction.

Thirdly, the transformation of the judiciary as a critical organ in the protection of rule of law and fairness cannot be over-emphasised. South Africa has domestic as well as international obligations under international human rights law to protect the rights of women and eliminate gender-based violence. It is clear in this regard that officials of the judiciary should undergo awareness raising training to prevent ignorant beliefs and cultural biases from impacting on the outcome of cases particularly those related to gender-based violence.

CONCLUSION

There is no doubt that women bear the greater burden of gender-based violence in our country. Despite the perceived shoddiness, ineffectiveness and inefficiency of the police and prosecution, it is not the entire system that has failed the cause of justice but rather the sense of duty and integrity of individuals in the system has a lot to do with the perception of unfairness. It must, however, be acknowledged that the state machinery structured to deliver justice to the people compared to other African countries is functional and the ability to challenge any aspect of the judicial process, particularly criminal offences, is a credit to the South African judicial system.

Twenty years into our democracy the time is ripe for the rewards of constitutional development to effectively and efficiently represent the entire demographics of our nation to ensure equal treatment for all regardless of race, gender and sexual orientation.

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CHAPTER 5

THE CRIMINAL JUSTICE SYSTEM RESPONSES TO SEXUAL VIOLENCE IN SOUTH AFRICA

Sanja Bornman

INTRODUCTION

It is widely accepted that South Africa has one of the highest levels of gender-based violence in the world. This is often attributed to our violent apartheid past, amongst other social and economic factors. In response, the South African constitutional and legislative framework with regards to gender-based violence is relatively progressive, and our government regularly condemns violence against women and children. However, research indicates that our law enforcement agencies and criminal justice system (CJS), managed by our government, regularly fail survivors of sexual offences, and often at the most basic level of service provision. In other words, our government's supposed condemnation of gender-based violence is not translating into justice for survivors.

Survivors often experience secondary trauma and victimisation at the hands of the criminal justice system that is meant to protect and assist them. This in turn exacerbates under-reporting in South Africa, where it is estimated that the number of sexual offences reported to the South African Police Service (SAPS) only represents a fraction of actual incidents.¹

This paper reflects first on the lived experiences of survivors of sexual offences, as they come into contact with law enforcement agencies and move through the CJS. It then considers, in more detail, two promising interventions to improve those experiences and conviction rates of sexual offences. This is followed by an assessment of government spending on these interventions in recent financial years, as an expression of political will to combat gender-based violence. The paper concludes that models of good practice, for all their promise, will not reach their potential without sufficient state allocation of financial resources.

THE SURVIVOR'S EXPERIENCE OF LAW ENFORCEMENT AGENCIES AND THE CRIMINAL JUSTICE SYSTEM

As mentioned in the introduction, South Africa has a relatively progressive and striving legislative framework that strives to combat gender-based violence. The framework,

including but not limited to the Sexual Offences Act of 2007 (SOA),² is underpinned by constitutional guarantees of freedom and security of the person³ and access to courts.⁴ Our laws are supported by a Service Charter for Victims of Crime in South Africa;⁵ a patchwork of regulations; national policy guidelines,⁶ instructions and directives;⁷ and standing orders for members of SAPS.

The framework is far from perfect however. The national policy guidelines for prosecutors dealing with sexual offences, for example, were published in 1998 – long before the new definition of rape and sexual assault in the SOA of 2007. The SOA itself also contains some problematic provisions that require amendment, one being the criminalisation of consensual sexual activity between adolescents which recently was successfully challenged and declared unconstitutional (*Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another Case CCT 12/13*). Parliament is now obliged to amend the SOA to do away with the harmful provisions.⁸

Nevertheless the framework aims “to minimise or, as far as possible, eliminate secondary traumatisation”,⁹ and places clear legal obligations on law enforcement and criminal justice system officials who come into contact with survivors of gender-based violence. These include legal obligations for, amongst others, the SAPS, state prosecutors, and public health services, specifically relating to the sensitive and respectful treatment of survivors of sexual offences, and the handling and investigation of such cases.

A significant amount of research into the implementation of the SOA has been conducted since it became operational in 2008. As a result we have access to a fair amount of information from various sources on the quality of implementation, challenges, and typical experiences of survivors making their way through the criminal justice system as it now stands in relation to sexual offences. Unfortunately, the picture is a bleak one.

A victim empowerment study conducted in 2011 concluded that there is an ongoing lack of information about the CJS and its workings, which leaves survivors in the dark as to their role in the CSJ and the roles of various officials of the CSJ itself.¹⁰ The study further concluded that far too little information is provided to survivors on the development and progress of their cases; that there is a lack of psychosocial care for survivors; that there is no central mechanism to hold officials accountable for failure to do their legislative duties; and that poor inter-sectoral collaboration and service coordination undermines positive outcomes for survivors. These systemic failures combined leave (already traumatised) survivors feeling overwhelmed, further traumatised, disempowered, and frustrated. In such

circumstances, victims often become disillusioned and it is not uncommon for them to withdraw their charges.

A rape case attrition study conducted in Gauteng in 2009 found that police officers rarely examined the scene of the crime, despite the fact that the national instruction to SAPS officers is to do so.¹¹ The study also found that there were often delays in taking statements from survivors and potential witnesses as indicated by the survivor; the police did not always record the contact details of the survivor and often failed to refer survivors for medical examination and collection of forensic evidence. The study also indicated that in 41.6% of cases where evidence was in fact collected, it was never sent to a laboratory for analysis. A similar study published in 2012 found that only 2% of rape dockets contained a report from a forensic laboratory showing DNA test results.¹² The same study found that only 42% of arrested perpetrators were ever charged in court, and that only 17.3% of those cases resulted in trials. Of the cases that resulted in trials, a rape conviction was only secured in 4.1% of cases. It goes without saying that in the absence of basic investigation work, a case will be unsuccessful, with significant implications for the survivor and that survivor's faith in the CJS.

The Shukumisa Campaign, a national coalition of organisations interested in holding the state to account when it comes to sexual violence, conducts regular monitoring of the implementation of the SOA, and has published several reports in this regard. A 2011 – 2012 study conducted by the campaign found that only 17% of police stations possessed copies of the relevant documents stipulated in the SOA, and that few of the hospitals monitored had qualified staff to conduct forensic examinations.¹³ Some hospitals had completely run out of post exposure prophylaxis which all victims are entitled to in terms of the SOA. In the following year, police stations once again performed poorly in having the necessary documents on hand, as mandated by the SAPS national instructions.¹⁴ The same study found that of the 19 public health care facilities monitored, only three met the requirements of a comprehensive service to survivors of sexual offences as contemplated in the national policy guidelines for health care providers. With regards to the judiciary, it was observed that not all courts provide preparation services for survivors and witnesses. This is a crucial aspect of a successful trial, especially in cases where the survivor is the only witness.

ATTEMPTS TO IMPROVE EXPERIENCES AND OUTCOMES FOR SURVIVORS

Despite the general climate, there are models of good practice aimed at improving the experience of survivors as they move through the CJS. The National Prosecuting Authority's (NPA) Thuthuzela Care Centre (TCC) model, where survivors access

multiple CJS services at a central location, is widely recognised as a way to reduce trauma and improve outcomes of survivors. In addition, after being disbanded almost a decade earlier, dedicated Sexual Offence Courts (SOCs) were re-introduced in January 2014, when the President signed the necessary legislation to allow the Minister of Justice to designate specially-resourced, survivor friendly SOCs.

THE THUTHUZELA MODEL

Thuthuzela Care Centres are one-stop facilities for survivors of sexual offences. Their aim is to reduce secondary trauma for survivors, and to ultimately improve conviction rates and efficient case management, by allowing survivors to access multiple services at a single service point. The project is led by the NPA's Sexual Offences and Community Affairs Unit (SOCA), in partnership with various donors. The centres are regarded internationally as a model of good practice, and a survivor-friendly way of delivering services and improving prosecution.¹⁵ Services offered at the TCCs include:

1. Welcome and comfort from a site co-ordinator or nurse;
2. An explanation of how the forensic medical examination will be conducted and what clothing might be taken for evidence;
3. A doctor to conduct the medical examination, with a nurse present in the examination room;
4. Bath or shower facilities;
5. An investigating SAPS officer on hand to interview the survivor and take a statement;
6. Access to counselling services;
7. Arrangement of follow-up visits, treatment and post-exposure prophylaxis;
8. Referrals for long-term counselling;
9. Transportation home by an ambulance or the investigating officer;
10. Arrangements for the survivor to go to a place of safety, if necessary;
11. Consultations with a specialist prosecutor before the case goes to court;
12. Court preparation by a victim assistant officer; and
13. An explanation of the outcome and update of the trial process by a case manager.¹⁶

The integrated, inter-departmental and cooperative nature of the model is the key to its success. Survivors can access multiple services from multiple state departments, including Social Development, Health, Justice and SAPS, at one central service point, instead of being sent “from pillar to post” in a traumatised or vulnerable state.

RE-INTRODUCTION OF SEXUAL OFFENCES COURTS

In June 2012 the Minister of Justice and Constitutional Development established the Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (the MATTSO). The mandate of the MATTSO was to investigate the viability of the re-establishment of Sexual Offences Courts (SOCs). After the rape and murder of Anene Booysen on 2 February 2013, international media attention on South Africa's ongoing gender-based violence pandemic heightened. Parliamentary pressure to address gender-based violence also increased, and the work of the MATTSO became even more imperative.

In August 2013 the MATTSO published its report, which concluded that South Africa should indeed re-introduce SOCs, stating unequivocally:

“The impact of sexual abuse on victims, especially children, often has far-reaching physical, emotional, psychological and developmental effects. Insensitive and hostile treatment of victims in the criminal justice system causes secondary traumatisation, which results in victims suffering further trauma, and consequently withdrawing from the system. The complexities of working with victims of sexual violence require specialised intervention on the part of all stakeholders, and this includes the courtroom environment in which they are required to testify. To ensure that victims are treated with fairness and respect for their dignity and privacy, they require support services that are delivered with sensitivity and care.”¹⁷

The MATTSO report was met with great approval, and reflected much of the thinking of civil society stakeholders that had fought for the reintroduction of the SOCs since their discontinuation. The report and its recommendations signalled a moment of consensus regarding the unsatisfactory state of services to survivors of sexual offences, and the elements of proper service delivery that would improve conviction rates and ultimately restore public confidence in the state's ability to achieve justice for survivors.

The state acted immediately, and by January 2014 (an election year), the President had signed a Judicial Matters Second Amendment Act¹⁸ that made it possible for the Minister to designate SOCs. By November 2014 a set of regulations and a National Strategic Implementation Plan was circulated for public comment, setting out the victim-friendly features survivors can expect from SOCs in the future, ranging from specialist staff and equipment, to prescribed infrastructure and institutional arrangements.¹⁹

Some special features distinguishing SOCs from ordinary criminal courts, according to the latest draft regulations, will include:

1. Separate age-appropriate waiting rooms for child and adult complainants;
2. A comfortable consulting room, designed to promote privacy;
3. A court preparation room, and preparation programme conducted by a specialised preparation officer;
4. A testifying room;
5. A courtroom that is informally arranged, with
 - closed-circuit television facilities for complainants testifying from a special separate testifying room and/or;
 - a witness dock for adult complainants that is not situated close to the accused and where the complainant will not have to walk passed the accused to get to the dock;
6. A separate entrance for complainants, to ensure privacy and to minimise encounters with accused persons;
7. Specialised prosecutors that deal exclusively with sexual offences, and presiding officers that have received specialised training;
8. Support services for complainants, including counselling services arranged by SAPS officers of the Family, Child and Sexual Violence units; and
9. Staff and judicial counselling services for those officials working in designated courts.

PAPER INTO PRACTICE?

Unfortunately, the success of TCCs and the promise of SOCs are undermined by a lack of funding.

In response to a parliamentary question in 2013, the Minister of Justice indicated that only 35 of the 51 department-run TCCs in South Africa were “fully operational”. In the 2013/14 financial year, the Department of Justice and Constitutional Development (DoJCD) failed to spend any of its own budget on increased services to survivors of sexual assault, and cultivating awareness of TCCs. Instead, USAID provided R20 million in “technical assistance” to the National Prosecuting Authority. This means that the TCCs appear to be entirely dependent on donor funding, and no national budget was allocated to their maintenance and further roll-out in 2013/14.²⁰ The DoJCD indicated in 2014 that “(t)he budget allocation over the medium term will enable the National Prosecuting Authority to increase the number of...operational Thuthuzela Care Centres from 43 in 2013/14 to 60 by 2016/17”,²¹ but it is unclear how

this will be achieved, as there is no expenditure estimate specific to TCCs.²² Plans and budget allocations therefore do not correspond in a transparent and meaningful way.

In addition, non-governmental organisations have historically been the providers of psycho-social care and counselling at the TCCs, but are not always able to obtain sufficient funding from the state to continue to provide these crucial services. In fact, government spending over the last four years appears to be directed at its own initiatives to provide counselling to survivors, at the expense of well-established and specialised non-governmental services.²³ This was the case in 2013, when the European Union provided a grant of 18 million Euros for South Africa's Victim Empowerment Programme. The national Department of Social Development used these funds, together with an additional amount of R8.4 million from the national Treasury, to set up a National Gender Based Violence command centre, managed by a private sector company. The purpose of this government-run command centre is to provide telephonic counselling, advice and referrals to survivors – effectively duplicating the long-established 24 hour gender based violence call centre that is run by non-governmental organisation Lifeline. The establishment and scaling of this “command centre” led to a huge increase in expenditure, from an initial R1.1 million in the beginning of 2013/14, to R13.9 million by the end of the 2013/14.²⁴

The Shukumisa Campaign has rightly criticised these spending choices, arguing that it has not only led to a duplication of services, but in fact threatens the quality of service delivery to survivors by specialised NGOs by diverting funding away from such organisations into more expensive but less effective state initiatives. These state initiatives also do not necessarily enhance the operations of tried and tested TCCs.

Similarly, the financial future of the SOCs is uncertain. The MATTSO report included detailed calculations of what a fully-functional SOC would cost, estimating that the setting up of a SOC from scratch would amount to approximately R3.6 million.²⁵ However, in 2013 the DoJCD reported that only R22 million had been budgeted for the first 22 courts, clearly falling short of the estimated cost per court. By mid-2014 it was reported that 22 SOCs had been “upgraded” (existing courts supposedly brought up to SOC standard) and a further 12 SOCs were poised for roll-out. But the roll-out was soon threatened by a lack of funding, with the NPA needing an additional R200-million in staff costs in the 2013/14 financial year.²⁶ Nonetheless, the Department planned to roll out 57 SOCs in the medium term.

Looking at Departmental budget votes and estimated national expenditure in the most recent financial year, it is once again not clear whether there is dedicated and sufficient funding available for the re-establishment of SOCs.²⁷ Information regarding estimated expenditure on staff costs, administration, and infrastructure is available

– but one cannot discern how these expenditures will or will not contribute to the roll out specifically of much-needed, and promised SOCs, especially in the light of the fact that SOCs present unique infrastructure and human resource challenges. Cadres of specialised court officials (presiding officers, prosecutors, interpreters, investigating officers, court preparation officers, probation officers and other social workers) will have to be recruited and trained, and investment will have to be made in infrastructure and technology to give effect to the draft regulations. Feminist researcher Joy Watson has suggested that the manner in which budgets are compiled obscures targeted spending on gender-based violence.²⁸ This obscurity hinders civil society’s ability to fully monitor progress and hold the state to account. The opacity of existing budgets in this regard therefore has profound implications for survivors, and could be betraying a lack of true political will to prioritise gender-based violence.

CONCLUSION

Despite the legislative framework, survivors of sexual offences still experience secondary trauma and poor service delivery as they move through the criminal justice system. Because the majority of these survivors tend to be women and children, the problem is a gendered one.

There are tried and tested ways of improving service delivery, and mitigating and reducing survivor trauma. The TCC model, and SOCs are recognised in this regard as contributing to improved service delivery, which in turn leads to improved conviction rates and increased confidence in the CJS. However, these good practice models cannot succeed and grow without the necessary resource allocation.

The levels of gender-based violence in South Africa are often decried by members of both the executive and legislative branches of government and have become ubiquitously referred to as a “scourge”, especially after the high profile case of Anene Booysen which exposed South Africa to international scrutiny. Despite the public outcry, however, it is not clear that the death of Anene Booysen has had any systemic impact on the criminal justice system and how it deals with gender-based violence. However, the success of TCCs and the promise of SOCs in making inroads in this regard cannot come to full fruition without *true* political will, which implies the fiscal prioritisation of those good practice models that have been proven to make a difference in the lives of survivors.

Endnotes

- 1 Jewkes R, Abrahams N, *The epidemiology of rape and sexual coercion in South Africa: an overview* (2002) estimated under-reporting of rape at one in every 9 cases; the Gauteng-specific study by Machisa M, Jewkes R *The War At Home* (2011) estimates under-reporting at one in 11 cases.
- 2 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. There are numerous other pieces of legislation that have a bearing on gender-based violence, including the Domestic Violence Act 116 of 1998, and the Protection from Harassment Act 17 of 2011.
- 3 Section 12 of the South African Constitution
- 4 Section 34 of the South African Constitution
- 5 A consolidation of the present legal framework relating to the rights of and services provided to victims of crime.
- 6 For members of SAPS and health care service providers, regarding the handling of sexual offence cases
- 7 For members of SAPS, medical health care providers and forensic health care professionals, regarding the handling of sexual offence cases.
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- 15 http://www.unicef.org/southafrica/hiv_aids_998.html
- 16 <http://www.npa.gov.za/UploadedFiles/THUTHUZELA%20Brochure%20New.pdf>
- 17 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters Report on the Re-establishment of Sexual Offences Courts (August 2013) Department of Justice and Constitutional Development, pg 5
- 18 Act 43 of 2013
- 19 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007: Draft Regulations relating to Sexual Offences Courts (September 2014), and the Draft National Strategic Implementation Plan on the Re-establishment of Sexual Offence Courts (27 October 2014)
- 20 The Department of Justice and Constitutional Development *Annual Report 2013-2014*, pg 83
- 21 Department of Justice and Constitutional Development *Report on the Implementation of the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007: 01 April 2013 to 31 March 2014*, pg 18
- 22 Budget Vote 24, Budget 2014, available at <http://www.treasury.gov.za/documents/national%20budget/2014/enebooklets/Vote%2024%20Justice%20and%20Constitutional%20Development.pdf>
- 23 *Bulletin 1: Under-funding rape and domestic violence services*, available at <http://www.shukumisa.org.za/index.php/2014/02/bulletin-1-under-funding-rape-and-domestic-violence-services/>
- 24 Shukumisa briefing for Department of Social Development Strategic Plan & Budget for Social Crime Prevention & Victim Empowerment Programme, available at <http://www.shukumisa.org.za/index.php/2014/10/shukumisa-briefing-dsd-budget-social-crime-prevention/>
- 25 Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters *Report on the Re-establishment of Sexual Offences Courts* (August 2013) Department of Justice and Constitutional Development

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**REAL
MEN
DON'T
HIT
WOMEN.**

**BLACK FRIDAY
FEBRUARY 15**

**ENOUGH
IS
ENOUGH**

*Graffiti on a wall in central Cape Town
promoting the Black Friday campaign
for ending gender-based violence.
Photographer: Ashleigh Furlong*

CHAPTER 6

THE PUBLIC DISCOURSE ON RAPE IN SOUTH AFRICA

Turning Women into Vulnerable Victims

Prof Amanda Gouws

INTRODUCTION

Gender based violence that includes rape, sexual assault, sexual harassment, and other forms of violence of a sexual nature, is a reality in South Africa. The statistics for sexual assault (that lump all forms of gender based violence together) of the South African Police Services (SAPS) for 2012-2013 was 64 514. While this is a reality, the way we talk about violence, or what we call the discourse around violence, often determines how violence is viewed or perceived, which solutions are pursued and to what extent there is moral outrage around gender based violence or not. The discourse also determines to what extent gender based violence will be viewed as a *political* problem and the solution found on a *political* level.

The way we talk about violence, or what we call the discourse around violence, often determines how violence is viewed or perceived, which solutions are pursued and to what extent there is moral outrage around gender based violence or not.

Carol Bacci in her book *Women, Policy and Politics* (1999) has shown that concepts are used or introduced to fit the policy problems of governments. Complex social issues and power relations are reduced to policy problems in order to find solutions for them, often not what feminists would have viewed as solutions. She cites Linda Gordon (Bacci, 1999: 166) as saying that deviant behavior becomes a social problem when policy makers perceive them as threatening to the social order. These problems are not presented in the same way as it would be presented by activists, for example. The way in which social problems are presented is political.

She shows how *family violence*

became a threat in the USA when traditional family norms were under pressure. In part this response was prompted by women's liberation – the perceived threat of women becoming too independent and the loss of male control over the family. This created a space for conservative policy interventions to protect the family at all costs. This approach targeted lower class women, stigmatizing them as neglectful mothers. Formulating the problem as such puts the intervention on the level of the individual, not on a system that would take into consideration the power relations between men and women in families and how it leads to wife abuse and child neglect when mothers are incapacitated to look after children because of violence.

This tendency to see gender violence as a psychosocial problem, based on the assumption that it forms part of violence in general, not naming the violence as *domestic* violence or wife battering, also prevents other types of interventions. This is why feminist lawyers in the USA started talking about the “battered wife syndrome” – to put the emphasis on the behavior of men.

THE PUBLIC DISCOURSE OF RAPE IN SOUTH AFRICA

In South Africa the shift from “violence against women” to “gender based violence” (GBV) can be traced back to the late 1990s coinciding with donor aid rhetoric to combat violence against women. According to Jane Bennett (2010: 27):

[G]ender, as a political dynamic...foregrounded as a force which organized 'women' into positions of vulnerability... and thus a term like 'gender based violence' came to encompass a vast range of potential violations: rape, domestic assault, abduction, trafficking, incest, sexual harassment, beating, murder of wives and sexual partners...[giving it a heterosexual focus].

The shift from *violence against women* to gender based violence had three important consequences: (1) turning women as the subject of analysis into gender as the subject; (2) conferring on women the status of vulnerability and thereby silencing notions of women's agency; (3) lumping men, women and children into a homogeneous group as related to violence with special needs and special treatment.

With the systematic dismantling of the national gender machinery (getting rid of the Office of the Status of Women, most gender desks on national level, the Joint Monitoring Committee on the Quality of Life and the Status of Women and the dysfunctionality of the Women's Caucus and the Women's Empowerment Unit) a Ministry for Women, Youth and People with Disabilities was put in their place in 2009.

The *perceived* vulnerability of these three groups created a discourse of vulnerability as well as lumping them together, as though they have a homogeneous experience of vulnerability.

Another pernicious effect of the use of a gender discourse is the limitations it puts on activism. Because gender mainstreaming is viewed as a form of governance, government policies are saturated with administrative interventions. Gender becomes constructed to represent women as lacking agency or as clients of social programmes or victims of political processes. This construction of gender is invisible – as though the solutions exist “out there”. They just have to be found (Manicom, 2001: 9). If the substance of gender redress or gender justice is lost, this unquestioning use of gender can even support anti-feminist and undemocratic agendas, such as the restoration of men as the heads of households with women being submissive to men. Feminist activists would put the emphasis on power relations between men and women, with violence as a way to enforce women's submissiveness.

In 2014 the Ministry for Women, Youth and People with Disabilities was replaced by a Ministry of Women in the Presidency. When the newly appointed Minister Susan Shabangu announced the theme of the 16 days -of -no -violence -against -women -campaign – “Count me in: Together moving a non-violent South Africa forward” – she argued that men are supposed to be the *protectors* of families and society. She further argued that we need to bring back these protectors. As she said “we need to mobilize our protectors”. Shabangu was severely criticized by women's organizations and other civil society stakeholders for her “patriarchal discourse” which detracts from women's agency. On the same platform where a speaker called for women to be submissive to their husbands and another called feminism un-African Shabangu nodded in agreement (*The Daily Vox*, 13 November 2014). The response from civil society was vehement, leading to a petition from organizations calling for Shabangu to resume the process to devise a national strategic plan for dealing with GBV, something that has been called for years.

The other side of the discourse of vulnerability is that women make themselves vulnerable through certain behavior, e.g. like the way they dress, and therefore need to be reprimanded for causing their own vulnerability. There have been incidents where men have taken it upon themselves to assault women who wear skirts that they (the men) deem too short. They justify their behavior through a discourse that challenges women's agency, calling their attire an “insult to culture”. The shift to the appeasement of traditional leaders under President Zuma and its concomitant discourse of feminism and homosexuality as un-African, indirectly condoning “corrective rape” of lesbian women reinforces harmful cultural traditions.

At the same time there is a discourse of the innocence of men who are perceived to be blamed and victimized by women who “call rape”. Both Jacob Zuma and Oscar Pistorius (who have gone through a rape trial and a murder trial respectively) have been treated as the victims of blame-mongers, to the extent that the alleged victim in the Zuma case (who was called a “serial rape accuser”) had to leave the country in fear for her life, having dared to accuse Zuma of rape. Pistorius had a campaign in his support by people who believed that he was unfairly treated and victimized because he “accidentally” shot and killed his girlfriend. The trial did little to highlight the concept of “intimate femicide” – the notion that men kill those whom they have intimate relationships with.

USING RHETORIC THAT IS DIMINISHING THE SEVERITY OF RAPE

Talking about the “Count me in: Together moving a non-violent South Africa forward” campaign Shabangu mentions that the campaign aims to provide a platform to engage all stakeholders ...to commit to collectively fight this *scourge* in society. She also said that members of parliament are a powerful force to take forward the clarion call to eradicate this scourge.

The meaning of scourge is something that can be attributed to an affliction, a bane or a curse that aims to cause destruction, to ruin or to devastate. It can also be a mortal person who inspires fear or dread.

The way the word scourge is used in the South African context (also in reference to HIV/AIDS) and very often by politicians in relation to violence against women is to create the impression that this type of violence is visited upon us like one of the ten plagues in the Bible. There are no actors involved, suggesting that it is difficult to explain and it is probably a form of punishment for sins committed. Gender based violence is called a scourge, not the men perpetrating the violence. I have never heard anyone say that “men are a scourge” or that men visit this scourge upon women. In most cases of rape men are the perpetrators who inspire fear or dread and who lay to waste women’s lives. Men are enacting the scourge of violence.

Using the word scourge to describe gender based violence means that it is an affliction for which we need to find a “cure”, putting the “cure” back on the level of dealing with a disease. What is needed, are strategies to deal with the brutality of violence visited upon women with impunity. It is not a clinical intervention but an understanding of the context of violence and the consequences for real live women and sometimes men.

Closely associated with the word scourge is the word “sex pest”. In an insightful

article in the *Mail and Guardian* of 12 December 2014, Sarah Wild writes about the inappropriate use of the word “pest”. She writes that a pest is a destructive insect or other animal that attacks crops, food, livestock etc., or an annoying person or thing, a nuisance. A pest is an irritation and she asks the question as to when assault, harassment or rape are the act of a pest or a nuisance? A rapist is not pest – he is a criminal. Again, through the way we use language we diminish the crime of rape and sexual assault, but more so we let the perpetrator off the hook. Rape is rape and murder is murder (e.g. an honour killing is still murder).

Because of the heterosexual focus on rape, an offensive term like “corrective rape” has become commonplace use for lesbian women who are raped by men to change their sexual orientation. This is another word that denies that rape is rape. By using the word “corrective rape” it is suggested that the men who perpetrate this type of violence are ignorant and in need of education regarding homosexuality, not that they are criminals.

It is clear that discourse guides action and a new discourse around violence against women is needed to inform policy making.

A NEW DISCOURSE: TALKING ABOUT VIOLENCE AS COSTLY TO THE STATE AND THE TAXPAYER

A DEBATE ABOUT “RECOGNITION AND REDISTRIBUTION”

Feminists in South Africa have started to argue that one way of getting policy makers to take the problem of violence against women seriously is to count the costs for the state. The shift to thinking about the costs of violence is an important shift. This is a discourse that if we understand it within the framework of Nancy Fraser’s notion of the two dimensions of gender justice – that of recognition of identities and the redistribution of resources – will play an important role to move us closer to a discourse of gender justice.

Gender inequality is a form of injustice that has far reaching implications for women’s recognition of their identities and their access to resources. The lack of recognition of the impact of violence is a measure of the status differentiation between men and women that values masculinity and devalues femininity. But when women suffer from gender based violence it also limits their access to resources. Moreover violence itself depletes resources since dealing with it has very serious implications for the state and tax payer. What Fraser argues is that status injuries can lead to distributive injuries (Fraser, 1998: 8).

What contributes to this injustice is that women rarely get to participate in discussion regarding strategies or interventions on violence by the state. The only

solution to this problem is the parity of participation that would include women as equal partners in seeking a solution to the violence.

In the case of violence, women's bodily integrity, dignity and respect are denied. Recognition in relation to violence pertains to women as a group in order to restore their common humanity and prevent their objectification and victimization through violence. What also needs to be recognized is their status as citizens, their subjectivity and their agency. Redistribution of resources is needed if we take into consideration that the direct costs of violence involve legal services/ court orders, medical treatment, perpetrator control, policing, incarceration costs, shelter and foster care, replacement of broken furniture and sometimes private security. Women most often have to bear these costs themselves, unless the state makes provision.

In September 2014, KPMG, the international financial services consulting firm, released a report on violence against women in South Africa, which estimated an economic loss to the state of between R28.4 billion and R42.4 billion in 2012-2013. Since the South African state does not keep disaggregated data on gender based violence these figures can only be considered 'a partial or minimum estimate' of the actual costs and is most probably an underestimate (KPMG Report).

It will benefit the state to calculate these costs. It is only in the past two years that researchers in South Africa have started to do this calculation. In 2014 research done by the research unit in parliament has shown that the costs for matters related to gender based violence for the Department of Justice and Constitutional Development amounted to R106 855 823.00 and for the Police Service it was R40 604 988.00 in 2012-2013. Costs for medical and forensic services were R14 895 068.00 and the estimated costs of protection orders was R70 122 566.00 in the Western Cape alone.

A discourse around recognition and redistribution does not imply that we put costs on a life but that the state has an obligation to take care of costs and therefore should also be involved in prevention of violence to lower the costs. We can rightly ask why the National Council on Gender Based Violence that was formed in 2012 is still not up and running. Why is the state not being accountable in this matter?

The importance of feminist activism to keep the state accountable should not be underestimated.

THE IMPORTANCE OF ACTIVISM

Feminist activism is rooted in a feminist praxis. This means that a struggle for gender justice will have a definitive outcome of making women's lives better. That is why the Shukumisa Campaign for example focuses on victim empowerment and attempts to



*Activists protesting against gender-based violence outside the South African parliament in Cape Town.
Photographer: Brendon Bosworth*



get the state to implement the Victim Empowerment Programme (Gouws, 2014). It is not events driven such as often observed of the state's actions during the 16 days of non-violence. Rather, it calls for a political programme that will put focused action on dealing with the causes of gender based violence in place. It also focuses on the treatment of victims/survivors – such as the institutionalization of the Thuthuzela Care Centres, one-stop centres for survivors of sexual violence. They also monitor the reopening of the Sexual Offences Courts, which have higher conviction rates for rape than any other court in South Africa. The Shukumisa Campaign involves women and men in their activism, as people fighting for gender justice, not the protection of women.

The discourse of activism is driven by urgency to change the conditions of women's lives, not the language of administrative programmes and strategic plans that are bound by time frames and budgetary constraints. We will only move the fight against gender based violence forward when there is synchronicity between the language of the state and the language of activism. The state's resistance against activism and activists is

detrimental to women. If there had been more networking of the state with civil society activists the National Council on Gender Based Violence would have been up and running by now.

CONCLUSION

Violence is a *political problem* and should be recognized as such. It is not only a social or moral problem. We should also recognize that the current public discourse of women's vulnerability around gender based violence constructs this type of violence in a manner that limits activism, as well as a more sophisticated understanding of women's agency in the face of violence.

Vetten and Watson (2009: 16) point out that what is needed to deal with violence against women is (1) that women in society are mobilized politically, (2) that key support networks exist among women politicians in the state with grassroots women to take up issues in the state and (3) the inclusion of a normative framework around gender issues to promote solutions to violence. What they make clear is that none of these conditions are sufficient if civil society with the necessary technical knowledge and mobilization skills is not involved, when it comes to dealing with gender based violence. This is a call for the state to come on board and engage the language of activism.

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PART 2
INDIA



CHAPTER 7

DECEMBER 16TH 2012

A Rape, a Murder and a Movement¹

Urvashi Butalia

INTRODUCTION

In December of 2012 the rape of a young woman by a group of men in the India's capital city of Delhi gained unprecedented media attention and led to major and continuing protests across the country. The rape victim, a twenty three year old medical student, was on her way home from a film show, with a male friend. The two boarded a bus, assuming it to be a privately contracted public bus (the transport system in Delhi draws on a number of private contractors to make up the shortfall in buses) and found themselves more or less alone, barring the six men, the driver and his friends, who subsequently brutally assaulted them, raped the young woman multiple times, and then threw the two out of the bus on a lonely stretch of road, presumably to die in the harsh winter cold of Delhi.

The moment the news of the assault broke, huge, spontaneous protests erupted across the city. The bus stop from where the two victims were picked up, is close to Jawaharlal Nehru University, one of the three major universities in the city. Hundreds of students and faculty walked in protest, retracing the steps of the victims. In the centre of the city, at Jantar Mantar, a space that has become known for being home to many protest marches, people gathered through the day and into the night, lighting candles, singing songs, performing spontaneous plays and demanding State action. Unusually, these protests included not only women, but also men: they cut across class and caste, region and geography, urban and rural or semi- rural, and they drew unprecedented media attention both at the national and international levels. Questions were raised in the media, in political forums, in international media and indeed at the governmental level.

Fearful of this spontaneous outbreak of people's anger, the State reacted by trying to control it – they closed down metro stations leading to the sites of protest. Not to be deterred, people took buses and drove. The State then closed all roads leading to the protest sites in the city centre. People reacted by walking. The number of places where they gathered increased and diversified. In residential areas in the city, resident welfare associations – hitherto known only to involve themselves in local issues such

as drains, roads, amenities – took to organizing candlelight marches, demanding safety for their daughters. And across the board, a demand arose for the State to react, for politicians to speak out – something they did, belatedly, and somewhat ham-handedly. The then Chief Minister of Delhi, Sheila Dixit, finally expressed her concern and sympathy, other politicians attempted to do the same, but despite this, there were also those who claimed, like self proclaimed godman², Asaram Bapu, that rape victims needed to treat their rapists like brothers and then rape would not happen, or that rape happened, as claimed by Abhijit Mukerjee, the son of India's President Pranab Mukerjee and a Member of Parliament, only to 'dented and painted' women.

Because of the sustained nature of the protests and their somewhat sympathetic treatment by the media, and because of the international attention, pressure mounted on the Indian State to act, and in subsequent months, a new law was put in place that extends and broadens the definition of rape. In the aftermath of these events, the question has often been asked: what was it about this particular case that caught the public imagination? And was the attention only momentary or did it lead to any change? If yes, what was the nature of such change and how, if at all, could it be tracked.

A little less than two months after the Delhi incident, another incident of rape, this time in South Africa, caught public attention and drew media coverage internationally, although perhaps not on the same scale. On the face of it, the two incidents do not have much in common, except perhaps for the brutality towards the victim, but it is interesting to look at them together, if only to make a comparative analysis of how the issue of violence against women, and particularly sexual violence, is addressed in different countries. The South African victim, a teenager called Anene Booyesen, worked as a cleaner at a construction company. On the day in question, she had apparently gone out with friends to a local pub, and had then left some time later along with some of her friends. The next morning, she was found by a security guard, still alive but barely so. A few hours later, she died. Like the victim in India, Anene³ had been gang raped and brutally assaulted, and the protests that followed this assault were, according to media reports, at least partially inspired by what had gone on in India in the previous month. Unlike in India, however, the protests were not sustained, nor did they draw the same kind of international media attention, although such attention was not entirely absent.

A TRADITION OF PROTEST

India is no stranger to protests. A vibrant, if imperfect, democracy, its history, like that of South Africa, shows how civil protest has been used as a weapon to mobilize

people to fight for change. Indeed, the history of India's freedom movement, rather like the history of South Africa's anti-apartheid movement, describes varied protests such as against the imposition of a tax on salt, against foreign cloth, and many others that together created the ground for the departure of the colonial rulers.

Mass protest has continued to be used as a pressure tactic against the State in independent India too, whether it is against the building of huge dams, or against nuclear reactors, or for the right to information, or education, or work and more. Delhi's protest marches in the wake of the December 16 incident were drawing on this long history, but also, on a more recent history of protests over two issues that had galvanized the city: one, a series of angry demonstrations against the acquittal of a murderer with political connections who was accused of murdering a young woman tending the bar at a party, and two, a series of huge mass protests led by a Gandhian, Anna Hazare, and a civil rights activist, Arvind Kejriwal (who has since on to become the Chief Minister of Delhi) against corruption, an emotive issue in India.

During both of these protests, people from all walks of life came together to raise their voices and occupied the large public grounds where protests were being held, camping there for days on end, defying the State's attempts to block their travel routes and demanding State action. The December 16 protests are firmly located in this tradition. What marked them as different was that this was the first time that people from diverse backgrounds were protesting on what is generally seen as a



Photographer: Manish Jaju



‘women’s issue’. In the past, ever since the mid-seventies which are seen as the starting point for the current phase of women’s activism, feminist groups had used protest like all others to demand change and action. Recent changes in different laws for example – the law on marriage, inheritance, rape, domestic violence, sexual harassment, and more – have all come about as a result of campaigns conducted by women’s groups across the country. However, by and large, participation in these campaigns has been limited to women – most men have kept away, seeing these as ‘women’s issues’. This is why the post December 16 protests became so significant.

Although protests erupted in the streets of Delhi almost immediately the incident took place, and were sustained over a considerable period of time, it took the political establishment of the country a few days to react, and it was not until the incident and the subsequent protests had received considerable media coverage, that political leaders in Delhi felt obliged to speak out: clearly violence against women was not high on their agenda.

VIOLENCE AGAINST WOMEN IN INDIA

Violence against women is not new in India. Nor is the issue of rape. National Crime Records Bureau statistics put the number of cases of reported rapes in India at one every twenty or twenty two minutes. In the year 2011, some 24,206 cases or rapes were reported in India. It is well known that reported cases, wherever they are, touch only the tip of the iceberg. Actual numbers, if they could be counted, are much higher – and as a general rule of thumb, reported figures need to be multiplied at least by a factor of ten to get a more accurate picture. As in other societies in the world, violence against women remains, still, the least talked about and most hidden of issues – the conspiracy of silence around them being created by virtually everyone involved, perpetrators, victims, society at large, laws, religion and patriarchal practices. In the Indian women's movement, however, this is an issue that has dominated much mobilization and action, and campaigns have focused not only on domestic violence but also political violence, the violence of war and pogroms, violence at the hands of the State and much more. Although certain changes – such as a recent (2005) law on domestic violence – have come about, what is clear is that violence against women continues to be perhaps the most significant obstacle to what is seen as 'development' and its perpetrators enjoy a degree of impunity

that is shocking and that is premised not only on legal tolerance and social sanction, but also on deep-rooted beliefs in the secondary status of women.

If Indian society is tolerant of violence against women, so also is South African society: institutionlised sexual assault at the hands of whites (despite apartheid, the black woman's body was always meant to be available for the masters), and its widespread prevalence in post apartheid society, are well known. Like India, South Africa too has fairly progressive legislation (with marital rape being recognized) but its implementation leaves a great deal to be desired. In both countries rape, sexual assault and other forms of violence against women are widespread, and while the occasional case may get public attention, most remain in the realm of invisibility. This is why, when something erupts into public attention, it is worth noting why and how this happens.

What was it about this particular rape case then that caught the public imagination? There isn't a single clear answer to this question, but perhaps some speculations can be hazarded. The young woman in question was an aspiring medical student, she belonged not to the wealthy privileged class, nor to the really poor class or caste, she was not fully rural, or urban. Her family, the father a baggage loader at Delhi airport, the mother a housewife, had migrated from their village to the city seeking a better life in this they represented the aspirations of thousands of other Indians who follow similar paths. Unusually the father had sold some land to gain money for his daughter's studies, allowing her to fulfill her dream. On the day in question, she had been to see a film with a male friend – such friendships, earlier frowned upon, represent much of what is happening between young people in the new India – and they were returning home at a reasonable hour of the night, he escorting her to her home. In other words, in every way, she was the 'normal' young woman you might meet on the street. Everyone could feel for her.

RAPE IN INDIAN SOCIETY

In most societies, women who have had to face rape are often stigmatized, as if they are the guilty ones. While this cuts across the board, it is true that certain kinds of rape or the rape of certain women evokes more outrage than that of others. Caste rape, for example, where Dalit women are particularly targeted by upper caste men and sometimes by their own men, is so naturalized in Indian culture, that it evokes very little outrage, and even the legal machinery sees it as something that is a part of our society. Rape by the army, common in places where the army has impunity such as in certain parts of northeastern India, and in Kashmir, is seen often as collateral damage, and sometimes even permissible for those 'poor deprived' army men who are defending

the nation. The woman's body, her autonomy, is the price that is paid for the defence of the nation. So these evoke less outrage. Not so long before the young medical student was raped in Delhi, we saw the brutal rapes of Dalit women in the state of Haryana and in Kerala, but those incidents did not lead to the same kind of reaction.

This one, however, did. Although protests erupted in the streets of Delhi almost immediately the incident took place, and were sustained over a considerable period of time, it took the political establishment of the country a few days to react, and it was not until the incident and the subsequent protests had received considerable media coverage, that political leaders in Delhi felt obliged to speak out: clearly violence against women was not high on their agenda.

THE MEDIA

The media, meanwhile, were out in full force, although media reactions were mixed, turning from the initial hawk-like and sensationalist ones to a more measured, more serious reporting, sustained over an unprecedented period of time. There were ways in which media reaction, while adhering to the media tenet of finding sensation where there is none, leaping to conclusions and then retracting, was also, in this incident, different. A number of talk shows involved feminist activists, rape survivors who were willing to speak out were encouraged to do so, politicians who responded in their usual prejudiced ways were put on the spot and questioned, serious editorials appeared in the papers. There is little doubt that the media took the issue seriously – other cases that happened around the time were also given considerable coverage for example – but not without their usual dose of sensationalism. The legal bar on mentioning the name of the rape victim was adhered to, her family was left alone to grieve, especially after the victim died, and some media also took the trouble to visit the homes of the rapists and examine the social and economic conditions there that could have led to the men becoming so violent.

The international media too kept the spotlight on India, although for different reasons. For many – for example Chinese media – this became a way of showing up how bad India was towards its women. For others, for example, western media, this became a way of showing the 'backwardness' of India, its attitude to women, and of showing how violent a society India was. The spotlight was firmly turned away onto another place, another culture, and no questions were asked, except in rare instances, about how bad things were for women in their own countries. For example, India began rapidly to be called the 'rape capital' of the world, and countries also issued travel advisories to tourists and others planning to visit the country.

However, no matter how blind it was to its own realities (rape statistics in the

United States for example, show a higher incidence of rape than in India but that did not stop reporters from representing India as the worst place in the world) media attention, particularly that of the international media, did serve one purpose and that was to cast a harsh spotlight on the Indian State's self representation as 'India shining', an image that had been already quite badly dented by the country's poor economic performance and its declining growth rate. The question that began to be asked was: how could a country that saw itself as a super power, an economic giant, afford to treat its women so badly. No doubt this also pushed the Indian government into taking rapid action.

THE WOMEN'S MOVEMENT

For women activists who had for long been demanding changes in the law on rape, and security for women on the streets, this incident launched them into a more intense engagement with both the State and the public on these issues. While the protest demonstrations in most places were heterogeneous and cut across class and gender lines, it was women activists who kept attention focused on the issue at hand. It was they who argued against and advised caution on the growing demand for the death penalty, pointing out how it had achieved little across the world, they who tried to keep the protests from being politicized and turning into slanging matches between political parties; they who lobbied with politicians and who put pressure on the State to act.

THE STATE

This had the desired reaction and the State instituted a committee to look into the question of rape. The findings of the first committee, the Usha Mehra committee, disappeared into some dark hole and its report has not yet been made public and is not accessible, although in recent months information has leaked out that the committee had recommended one stop rape crisis centers in all states. The second committee – the Justice Verma Committee – made up of three members, was at first received with some skepticism by women activists who asked why, for example, the committee did not include even one woman lawyer or activist who would have direct knowledge of the situation on the ground. They pointed to the presence of several such women in the legal field, including one, Indira Jaising, appointed by the government as the Additional Solicitor General of India.

However these fears were soon laid to rest when the Justice Verma Committee actively solicited women's cooperation and invited women's organizations from across the country to come and 'give evidence' on the sorts of changes they felt should be instituted in the new law. The committee's mandate was to come up with a set of



*Student protests at Raisina Hill
Credit: Nilanjana Roy / Wikimedia
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recommendations that could be incorporated into new legislation on rape and sexual violence that the State would then put in place. In doing this, the committee showed itself open to a wide range of issues including questions like the death penalty, those relating to sexual identity, particularly that of transgenders, those relating to gender specificity or neutrality of rapists and rape victims, support services for survivors, and more. These questions were intensively debated in the two days that the committee met with activists and discussed their written submissions. Among the issues highlighted by women's groups were: a change in the definition of rape beyond just penile penetration to take in penetration by all sorts of objects; the recognition of marital rape; bringing in gender neutrality in the definition of rape victims so that transgenders, men and boys could also be included, and more. In the end, the Committee produced its report – one day short of the thirty day deadline it had been given by the government – and the report was widely hailed as the most progressive document about women to come out of India since independence and certainly since the publication, in 1974, of the Committee on the Status of Women Report. The Justice Verma Committee Report did not limit itself to the issue of sexual assault but deliberated and wrote on a wide range of issues to do with women in India.

THE NEW LAW ON RAPE

One of the direct results of the protest marches and the findings of the Justice Verma Committee was the drafting of new legislation on rape, which first made its appearance as an Ordinance and was later discussed in Parliament and adopted as an act. For women's groups, this victory, while important, was a limited one. The new law did not take into account – unlike the South African legislation – the issue of marital rape. It brought in the death penalty, something women's groups had, by and large, been opposed to. It also did not accept fully the demand made by many groups that the perpetrator of rape be gender specific, i.e. male, but the victim be gender neutral because, as women's groups pointed out, men and transgenders were also targets of rape and this was one of the most silenced aspects of sexual assault. But the law did bring in a wider range of crimes under the ambit of sexual assault, so that things such as stalking etc were also now criminalized.

In many ways, the new law built upon the changes that had come about in the rape law in 1983, the first major changes to be made since the colonial period. At the time, a sustained movement against rape at the national level had forced the State to sit up and take notice and bring in some key clauses in the law. Most significant among these was a change that held that in cases of custodial rape, that is, when the victim could be said to be in the perpetrator's custody, as an employee or held in a

police station, if an accusation of rape was made, and if medical evidence showed that rape had taken place, the accused would be presumed guilty until he could prove himself innocent, and the minimum mandatory punishment would be ten years. Generally opposed to harsh punitive measures, women's groups had, by and large, supported this change because of the numbers of reported incidents of rape by the police. In the years between then and now, other developments, such as the use of rape as a weapon of war, for example in sectarian violence, had led to the need for mass rape to be recognized. The new law, with its extended definition of rape, brought in some of the clauses women had asked for, and left out some key ones. For many people, the feminist opposition to punitive justice in the shape of the death penalty seemed difficult to understand because of a widespread belief that the death penalty would act as a deterrent. Equally, the feminist insistence on recognition of marital rape came up against strong opposition as most people believe marriage to be a sacrament, and somehow within that, the belief that the man has the right to the woman's body seems to have almost a kind of stranglehold.

Outside of Parliament, the promise of fast track courts was also upheld, with this case being handed over to a fast track court and tried on a day to day basis, even though the verdict was only delivered some nine months after the case had actually happened, and the court awarded the death penalty to the rapists, one of whom was seen as a juvenile and was therefore put in the hands of the juvenile justice court and another died in prison in mysterious circumstances. While feminists welcomed the decision to bring about a speedy conclusion to the case, theirs were the only voices attempting to look at this decision in a balanced way. The legal system in India is mired in all kinds of delays engineered by lawyers who drag cases on for long years and judges who are more than willing to let this happen and who often are party to such delays themselves. This has resulted in an enormous backlog of cases at all levels of the court system in India, with people often waiting for justice for years, sometimes decades. Feminist groups have been critical of this system of delays, pointing out that often, in cases of sexual violence and assault, by the time judgments come, the victims have had to live with the stigma of being raped women (an injustice in itself), or they have moved away from places where the incidents took place and cannot be traced, or they have no interest any longer in the legal process. It is in this context that the government's decision to hand over this case – and others that would come up – to fast track courts was welcomed, but feminist groups were also aware that this would mean that other cases in the purview of fast track courts, would have to be delayed in order to accommodate the new ones. Thus the interests of one set of justice seekers would be pitted against those of another.

Nevertheless, while keeping the dialogue alive, and being critical of gaps in the new law, women's groups were also open to working with the changes that had come about. Indeed, one of the things that marked this particular interaction between the State and women's groups was that it did not turn into a confrontation in which women's groups rejected the State and refused to work with it = twenty years ago this kind of reaction would have been a real possibility. While recognizing the limitations of the new legislation, women's groups raised questions about its gaps, and resolved that they would continue to engage with the State to bring in the changes that they felt needed to be there. A critique was mounted of the State's refusal to include marital rape, and its refusal to take away the army's special powers and privileges and bring rape by men in the armed forces, especially in areas where the Armed Forces Special Powers Act was in existence, under its purview. In Kashmir and the northeastern states for example, where there have been long, sustained movements against the Indian State, the army functions under an act entitled the Armed Forces Special Powers Act that gives it unprecedented powers, and unprecedented impunity.

Nor did women's activism stop at engaging with the State on the question of law. During the deliberations of the Verma Committee women's groups had provided the members of the committee with detailed information, research and recommendations on the need for ensuring safety for women in urban areas, providing better lighting across the country, in working with companies employing women in the information technology area where women had to travel at all hours of the day and night – in other words on a wide range of issues. Another key issue that women's groups highlighted was that of caste rape: they pointed, for example, to the increasing evidence of the rape of Dalit women across India and emphasized the need for the State to turn its urgent attention to this, showing how such rape did not result in the same kind of outrage that the December 16 incident had raised, because of the widespread internalization of caste inequality in India. These engagements continued post the bringing in of the law, and do so today. In this, they show not only the maturity of women activists but a willingness to see the question of violence against women in its entirety, rather than look at it piecemeal and address it piecemeal.

THE WIDENING DIALOGUE ON GENDER AND VIOLENCE IN INDIA

The December 16 rape case also led to much reflection on what were the root causes of violence against women in India and how these can be addressed. Interestingly, discussions and conversations on the subject, which would earlier have been limited to women's groups or women activists, now, perhaps because of the media attention, became more wide-ranging. Thus schools in many cities began discussions with

their students on why women faced violence, their unequal status in Indian society and how this impacted society as a whole. Such interactions were not only limited to elite schools, but spread across the board with municipal schools and non formal institutions also taking part in them.

Anecdotal evidence also suggests that parents in different places showed considerable concern for the safety and security of their children, asking whether it would not be useful to institute sex education in schools and if this was to be done, how it could be brought in. At a recent discussion on the need for sex education, counselors who work in schools spoke of how many more people coming to them shared their anxieties about the prevalence of violence against women and how they could deal with it.

Surprisingly, the media also did not give up their focus on violence against women, keeping up their reporting of cases and a number of subsequent incidents came to light. Indeed police statistics showed that in the three months following the December 16 rape case there had been a spurt in reported cases of rape, which had almost doubled, leading to speculation about whether the number of cases had actually increased or whether more women were coming out to report.

None of this, however, answered the question of the prevalence of and deep acceptability for gender based violence in India. Why was it that in a society that at some levels offers considerable space to women, there continues to be such deep prejudice against them? There are no easy answers to this question.

Among the answers that are often offered is the fact that India is a deeply traditional society and both tradition and culture in this country firmly place women in an inferior

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position. While there is no doubt of the truth of this statement, it is also true that in the last few decades India has urbanized rapidly and many changes have come about on the ground. In urban areas, women for example are now coming out into public life and taking up new kinds of jobs, jobs that were not open to them previously such as working in call centres, in business processing and information technology companies. These new forms of economic engagement often result in increased self-confidence among women, a different sense of self, and the willingness to change. The question, however, remains – is the social milieu around them ready for this kind of change?

As well, although the lines between city and village remain sharp, they have also, over the years become increasingly blurred. With the spread of television, the mobile phone, and the wide availability of consumer goods, comes also the desire to possess these goods. This, coupled with the failure of governance and the absence of the State from the lives of people who are often just on the outskirts of the city and who lead very hard lives, makes for a tension that the Indian state has not yet been able to deal with. One of the remarkable things about the December 16 case was that for the first time, different questions began to be asked. There was a curiosity about who the rapists were, what sort of conditions they came from, what led them to the city and why they were so hostile to the young woman who became their victim, and indeed to the young man who was accompanying her.

While these questions cannot be easily answered, it is clear that the men who committed the rape came themselves from poor homes where violence towards women was not uncommon, and where conditions of life were harsh. But this is not the only reason. Economic and social tensions can lead to violence and that violence can take the form of hitting out at the most vulnerable, in this case women. But as the December 16 incident showed, the men had committed one robbery just before this incident so sexual assault was not the only thing on their minds. Also, while economic tensions can contribute to rape, it would be a mistake to look at that as the only contributing factor. As is well known, most sexual assaults and rapes take place not in the public world, but inside the home and from known people and unless this is addressed, it will be difficult to move ahead.

This is also why the State's reluctance to recognize marital rape as a crime is a serious lacuna. The message that this sends out is simply this: that if rape is legalized, as it is if it is not recognized within marriage for the conclusion then is that if the man 'owns' the woman he can rape her, then it is acceptable, and it is only where it is not legalized, i.e. if it takes place outside of marriage, that it becomes a crime. From seeing rape within marriage as 'legal' it is not a long stretch to begin to see rape within the

home, within the family, as legal. And this means that the majority of rapes will therefore not even be recognized, let alone dealt with in legal or social terms.

As well, in most societies, and India is no exception, rapists enjoy a sort of impunity that encourages them to continue to use rape as a weapon to keep women in subjugation. In places like Kashmir and the northeast in India, or in cases of caste rape, conviction rates are so low as to be negligible. Indeed, in Kashmir for example, raising the issue of sexual violence is seen as contributing to the anti-nationalism of Kashmir. This is how for example the rape of 30 women in Kunan Poshpora in 1991 was dismissed by the Indian state as a fabrication, although for twenty years or more no woman in those villages has been able to marry because of the stigma. Similarly, action in cases of the rape of Dalit women is often slow and negligible, thereby leading to the conclusion that some rapes are more acceptable than others.

CONCLUSION

Much has happened in India in the last year and a half to keep violence against women at the centre of public attention. The December 16 rape case led to considerable rethinking on the issue of sexual assault and rape in India and nearly a year later, one of the important things to note is that the subject has not disappeared from the public agenda. During this period, other incidents of

It is significant that in the eyes of many in the world, the two cases were often linked, providing evidence of the fact that violence against women remains an issue worldwide, no matter what the level of 'development' of a particular country. What is also important is that the protests and activism surrounding the December 16 case in India resonated across the world, providing inspiration and perhaps even hope that change is not only necessary, it is also possible.

sexual assault came to public attention and to which December 16 became a sort of reference point. Statistics provided by the police in Delhi and other cities showed that in Delhi specifically, reported cases of rape had gone up almost three times in a period of six months following the December 16 case. Were these just copycat crimes or was it that women were actually coming out to report more, following the promise of rapid action post December 16? While it was not easy to find an answer to this question, the general speculation, among women activists and indeed among the police force, was that more women were indeed coming out to speak. Police personnel who refuse to register complaints of sexual assault are punishable under the new provisions of the law, which was seen as an enabling step for women to report. It was also during this time that a survivor of gang rape in Kolkata, Suzette Jordan, took the brave decision to speak out about what happened to her, despite allegations by the ruling party in West Bengal that her allegation of rape was politically motivated. Suzette's assertion that she would fight and that rape was not the worst thing that could happen to a woman, was important in raising a different kind of dialogue on the issue. Subsequently, another survivor of gang rape, a young photojournalist from Mumbai, while not revealing her identity, used her media access to keep the issue on



Photographer: Ramesh Lalwani

the public agenda. Around the time of the December 16 case, an incident that came to be known as the Suryanelli case, that of the repeated rape, over a prolonged period, and by different men, of a poor young woman from Kerala, and the alleged involvement of powerful politicians in it, remained in the eye of the media.

Shortly after the new law on rape was enacted, the government took a long overdue step, that of bringing in a law on sexual harassment which had, till then, functioned as a set of guidelines suggested by the Supreme Court of India. While this law too was not entirely to the satisfaction of women activists, it nonetheless came into effect and, when read in conjunction with the law on rape, created a climate in which sexual violence could not now be treated with such impunity or indeed ignored if women were able to speak out about it. A high profile case of allegations against self proclaimed godman Asaram Bapu, who had earlier made statements about women treating their rapists as brothers, led to his arrest and incarceration despite considerable opposition from his followers. And later, another high profile case involving Tarun Tejpal, editor of a well known magazine Tehelka, led to his arrest for questioning. The trial in this case has, at the time of writing, not yet begun.

It is in this context that we need to look at the question of whether anything has changed at all since December 16. While it is difficult to say whether change has been at all widespread, or indeed what its scale has been, the fact that there is now much more public attention to issues of sexual violence is something that is important to note. Women activists point to other things worth noting: the involvement, in issues that were previously seen only as 'women's issues' of young men who are willing to stand up and be counted and to speak out for women. Equally, speaking out against women, or making anti women statements in public, is now not so easy and most politicians would think twice before doing so. Many women activists will say that while it is difficult to pinpoint change, their sense is that something has begun to shift somewhere. However, notwithstanding the importance of even conversations and discussions around the issue, it is not until we begin to address the deep-seated acceptability of violence against women in our society and look at it in all its manifestations – so marital rape, army rape, caste rape – that we will begin to start the process of addressing this issue. The process of thinking may have begun, but there is still a considerable distance to go.

Change, in a country the size and complexity of India, is always difficult to measure. In the end, it is often anecdotal evidence that provides the possibility of hope. A few months after the December 16 incident, a group of young women from Kashmir, all in their twenties, took an unprecedented step. They filed a petition in the courts, asking for a review and reopening of the Kunan-Poshpora case, referred to above, a

case of mass rape by the army, in two villages, Kunan and Poshpora in Kupwara district in Kashmir. Despite strong evidence to the contrary, two investigative reports had held that there was no truth in the claim of rape made by the 30 victims from the two villages. However, over the years, these victims lived – and some of them died – with the stigma of rape, and it was only in 2012 that, inspired by the protests in Delhi, six young women, who were infants when the case had taken place, took up cudgels on behalf of the survivors and gathered together a 50-woman strong group to file the petition. Today, they are working together to break the silence on this particular history, pooling their energies not only to fight the case but also to provide a record of this history in the form of a book. The attention this group of women brought to the issue after a gap of two decades has already borne results with men who had earlier participated in ‘covering up’ and had asserted that nothing had happened, now coming out to reveal how they had been pressurized into taking what were clearly compromised stances. It took the unfortunate rape and death of the young woman in Delhi to galvanize her sisters across the country into action: sometimes, one tragedy can act as a catalyst for change.

Such a process of change may not have begun in the same way in South Africa with the Booyesen case. But it is significant that in the eyes of many in the world, the two cases were often linked, providing evidence of the fact that violence against women remains an issue worldwide, no matter what the level of ‘development’ of a particular country. What is also important is that the protests and activism surrounding the December 16 case in India resonated across the world, providing inspiration and perhaps even hope that change is not only necessary, it is also possible.

Endnotes

- 1 This paper was first published by the Heinrich Böll Foundation Southern Africa office in July 2014.
- 2 Godman is an Indian colloquial term for a type of charismatic guru in India.
- 3 The law on rape in India prohibits the making public of the name of the rape victim/survivor while there is no such restriction in the South African law. This is why Anene Booysen is mentioned by name, while the name of the Indian rape victim is withheld.

CHAPTER 8

SEXUAL VIOLENCE AND MEDIA – THE INDIA STORY

Smruti Koppikar

INTRODUCTION – SOME BROAD THEMES

As 2014 came to a close, Delhi was rocked by a rape case, two years after the horrific gang rape of the 23-year-old physiotherapy student that had shaken India. In this case, a young professional who had hired an App-based taxi, Uber, and had dozed off on her way back home was raped by the driver. It seemed as if little had changed in the intervening two years.

The Indian media widely reported this incident and used it as a lens to take stock of the time in between and examine if anything had changed for women and their safety. Several newspapers, magazines and television news channels, both in English and Indian languages, marked December 2014 with a special series on rape survivors, legal advancements and the work yet to be done.

The Delhi gang-rape on December 16, 2012, has become a milestone by which the media will measure how far the Indian society has progressed – or not – since then and how much secure Indian women felt – or not – since that night when the physiotherapy student was brutally raped by five men on a cold winter night in a moving bus. Her struggle to live had inspired thousands to march the streets of Delhi, Mumbai and other cities demanding better security for women. Her death two weeks later had turned into a national loss, her story a recurring theme in the nation's political and social conversations. In September 2013, a Delhi court sentenced four of her rapists to death; the fifth, a juvenile, was sentenced to three years in a reformation institution.

The media has played its role in keeping her memory alive in the national conscience, asking tough questions of the local administration, the police department, national and state governments, indeed of all authority that had sworn to protect the life of every Indian. The nation, certainly its urban areas, had not seen such an outpouring of anger and censure against elected governments since the 1980s on the issue of sexual violence and crimes against women as it did in the last few weeks of 2012.

Since then, the theme of sexual violence, more specifically violence against women in public places and women's responses to it, has receded from and returned to the national political space, depending on what crime was committed, but continues

to occupy the media space. This is certainly true of the English media in large cities such as Mumbai and Delhi. That the alleged rapist taxi driver in December 2014 threatened his victim that he would “insert a rod” as in the infamous Delhi gang-rape incident if she reported him, showed the extent to which details of that case are recalled as reference points. The Delhi 2012 brutal incident had not been forgotten – either by perpetrators or survivors/victims.

The popular understanding of sexual violence (especially molestation and rape in public places); the lower threshold at which such violence is reported to the police; the calling out of misogynist men and women in public life (including powerful politicians and self-proclaimed religious leaders); and the persistent attention to make public places safer for women and children among other

incremental progresses on this issue can be credited to sections of the mainstream media and social media that did not take the gaze off this issue. Those who argued that this conversation was marring the India growth story were suitably put down.

Yet, expectedly, the media story on sexual violence is not one without blemishes and drawbacks. Some of these are institutional in that they emerge from the media's ownership structures, its abiding interests, and inherent biases and prejudices. Despite these, the fact that large sections of the media have consistently kept their lens on sexual violence has, in turn, allowed public space to discuss the issue, debate strategies to mitigate it, and argue against medieval mind-sets that foster the culture of such violence.

THE CHANGES

The landscape of sexual violence in India, especially urban India, has changed in the last two years; the media has been both the reporter and the motivator of the change. There has been an increase in the reporting and coverage of sexual violence, an alertness

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and sensitivity prevails in newsrooms on the issue that was not always visible earlier, women's organisations and lawyers working on the issue have been given space and time, the legal developments have been adequately covered, there have been debates – however small – on the language used such as “rape victim” or “rape survivor”.

Clearly, the denial and non-discussion of sexual violence earlier has given way to robust reporting and discussion about crimes against women. I explain the reasons and steps taken later in the article. It's no longer a subject conveniently ignored or downscaled. This enhanced attention and greater social scrutiny should have reflected in fewer cases of such crime registered, so goes the popular perception. On the contrary, the National Crime Records Bureau (NCRB) and state/city police data across the country shows a definite spike in the number of cases registered. There was a 35.2% increase in the number of rapes reported in the country – from 24,923 in 2012 to 33,707 in 2013, according to the NCRB. The final data for 2014 has not been officially released but it would be safe to assume an increase in reported rape cases.

This appears to be a dichotomy. It is not. Typically, as public awareness and consciousness about violence against women develops, more survivors and their families are encouraged to report it to the police. For example, Delhi, the national capital, continues to be the most unsafe city in the country, with the number of reported rapes having doubled from 585 in 2012 to 1,441 in 2013. It is followed in 2013 by Mumbai (391), Jaipur (192) and Pune (171) as the top few unsafe cities in the country. Heightened consciousness and higher number of cases are parallel streams running at the same time. The media has reported both these streams.

Indeed, the country has witnessed multiple and inter-woven areas of work on the issue: preventive efforts to reduce and eliminate sexual violence, work to foster a positive attitude towards women, determined legal pursuit of certain rape cases, joining the dots between themes such as sex education in schools and sexual violence, and so on. This made it challenging for the media to accurately grasp the whole picture, reflect the multiple layers of work, report on areas that did not respond to these concerns such as police forces, and give voice to the women who need it the most. It called for a mix of reportage, analysis and campaign-style coverage. The media that accomplished decent coverage was able to muster its strengths and capabilities in the newsroom to weigh in on this issue. The emerging social media also helped to flag off certain news points.

An outcome of the Delhi gang rape of 2012 was that the then United Progressive Alliance (UPA) government set up the Justice JS Verma committee to study sexual violence and make recommendations. The committee met hundreds of people and pored through thousands of suggestions and turned in a report within a month. It

was the most comprehensive and unprecedented report on sexual violence in the history of independent India. For, Justice Verma (since deceased) and his committee members traced the incidence of sexual violence and heinous sexual crimes to the prevailing social attitudes and contemporary changes, giving sexual violence in India an underpinning that had not been officially done earlier. The report was accepted by the then government and changes/amendments made to law to provide improved responses to sexual violence. However, the government went against the committee's recommendations to institute a death penalty for repeat rapists.

Almost all news media in the country extensively reported on the Justice Verma committee's recommendations, asked questions of the establishment and pointed to the lacunae between the existing situation and the recommendations. It could be said that sections of the media used the report as a lodestar by which to chart its coverage on the issue. As the Criminal Law (Amendment) Bill was passed in 2013, to incorporate some of the legal recommendations, the media closely reported its progress. The occasion was used as a news-hook to revisit another recent law; the Protection of Children from Sexual Offences Act was passed in 2012 but was popularised in the last two years. This is of particular concern as a sizeable section of survivors/victims were in the 14-18 years age group, as the NCRB data showed.

Sections of the media also began to run deep-dive stories based on the NCRB data, the only official and widely reported data on crimes in India. It is not comprehensive in the strictest sense of the term because the NCRB draws its data from police stations around the country, categorised by states. This means that if sexual violence has not been reported to the police or, as is common practice, the police refuse to register an offence, it does not reflect in the data. Yet, given its spread, the NCRB remains the most accessible source to track the incidence of sexual violence. Large sections of the media used this data extensively.

As the media continued to keep its lens on sexual violence and the country's ever-slow and complex judicial system was unable to keep pace, social scientists could discern an impatience and anger rising among citizens. This often resulted in incidences of retributive justice being given to offenders. Two examples should suffice. In July 2014, a 7-year-old girl was raped and murdered near Bengaluru, India's premier software city; locals caught hold of the 60-year-old alleged rapist, who was a tantric healer and beat him to death. In October 2014, locals in Rajasthan state's Ganganagar apprehended a 40-year-old man raping a teenage girl, dragged him to the nearest butcher's shop and castrated him with a meat cleaver. The more such incidences were reported, the more shrill the public demand for instant and retributive justice became. Yet, they had to be reported.



Photographer: Manish Jaju



As always, but with an added acuity, the media had to keep a precarious balance between keeping citizens informed and fuelling the need for retribution and revenge.

Another welcome change in the media was that it dropped the holy-cow approach to high-profile cases of sexual violence. This meant that stories of venerated judges of high courts and the Supreme Court accused of sexual harassment by young interns were no longer taboo. The media adopted a cautious approach in its reporting of such cases, but it was important that sexual harassment – often the first step in sexual violence – began to be increasingly reported and written about.

That the public mood and the media's reflection of it play a role in engendering laws and rules was evident when the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was finally passed in April 2013 and came into effect in December that year, one year after the Delhi gang-rape. The Supreme Court had set down the Vishakha guidelines and suggested a law way back in 1997. This law covers only the formal establishments while a large majority of Indian women continue to be employed in informal workplaces with little or no security, but this is a start.

Some women's groups sought to move beyond the limited issue of sexual violence and women's safety to question women's use of public places, even asking why women do not loiter around the way men do. Sections of the media devoted space to the idea of women's right to loiter but it remained a marginal issue in the media domain.

Within newsrooms, there was an increase in the awareness of sexual violence as a significant issue, not to be "downgraded" to soft and space-filler issues. However momentary, women's safety occupied space in the news agendas discussed in newsrooms.

Non-profit women's media organisations and associations handed out guidelines on reporting sexual violence to journalists across the media. These were helpful especially in guiding younger reporters and desk-hands in coverage of sexual violence. Yet, changes are incremental and Indian newsrooms are still far from ideal when it comes to dealing with sexual violence cases. This can be traced partly to structural deficiencies in media organisations which give primacy to certain subjects over others, partly to the news agendas that seem to reflect a curious mix of conservatism and liberalism, and partly to the large number of men occupying top editorial positions despite a surfeit on women in the ranks.

At another level, it would be appropriate to examine the media's language and approach to reporting sexual violence. Given that the Indian media is so complex and fragmented, it would be difficult to draw inferences for the media as an entity. In various cases, different sections of the media behaved differently. The same newspapers and channels exhibited different approaches on different rape stories.

While the country's largest paper with some of the most experienced journalists on its staff handled the Delhi gang-rape coverage with some sensitivity, the same paper went to ridiculous lengths – including sending reporters to the survivor's apartment complex – in one of the Mumbai's Shakti Mill gang-rape case to dig personal information on her, which it reported. Later, it front-paged a story of her saying from her hospital bed that she wanted her rapists hanged. This was contradicted later when she and her family released a statement to the media. In it, she said that the court would decide on the appropriate punishment for them. There were also needless references to the lower class status of the alleged rapists.

The established and reputed newspapers and television channels seemed to take care to follow procedure while reporting sexual violence cases. The names and other identifiable characteristics of the survivors were withheld as required by Indian law. Unfortunately, some sections of the media raised the usual questions about the survivor's share of blame in rape, her sense of dress, her being out at odd hours and so on.

The difference in the post-Delhi phase was that these offensive references were fewer than they would have been earlier. Certain media outlets continued to focus on the dramatic and sensationalist details of the rape but there was visible restraint in reporting. A few even examined their language of description, and changed the "victim" to "survivor" to more correctly reflect the changing mind-sets and times. Others argued that such cosmetic changes would serve little purpose. But those who value the power of language to paint the world for us would realise that calling her a survivor – and not victim – immediately places the woman in a positive light.

Such incremental changes were driven by individual editors in newsrooms rather than a pan-media sensitisation. From anecdotal evidence, it seemed that having women in senior editorial positions in the newsroom, if not at the very top, did make a positive difference to that particular media organisation's approach, sustained coverage, language and placement of sexual violence stories. This has been true of the media. The challenge would be to broad-base such approaches and train younger generations to be sensitive in their approach.

THE NON-CHANGES

There is no indication that the frequency or brutality of sexual violence against women dropped in India as many had hoped it would after the Delhi gang rape forced society and its institutions to focus on the issue. On the contrary, the numbers of crimes against women, including rape, showed a sharp upward trend in the last two years. Of course, this could simply be an outcome of improved and more reporting of such violent incidents as affected women come out with their horror stories.

Sexual violence is mostly a function of a number of factors, many of which tend to be institutional. For example, inadequate lighting in public places or lack of proper sanitation facilities or non-reliable public transport has a direct bearing on women's safety in an area. The design and architecture of a city or a village has a role to play in how sexual violence can be mitigated. Yet, despite the heightened awareness, these issues did not find a place in the media reportage and discussions on sexual violence.

Throughout the two years, including during India's general election in 2014, political leaders – mostly middle-aged or older – men resorted to making extremely sexist comments on women and safety. One self-styled religious leader, Asaram Bapu, stated that the Delhi gang-rape victim “should have taken God's name, held hands of one of the rapists and pleaded ‘You are my brother’ and asked the other rapists as religious brothers to come to her rescue”! Asaram himself was arrested last year for sexual assault of a minor girl in his sprawling and well-appointed ashram but witnesses in the case are mysteriously dying. A highly influential politician and former chief minister of Uttar Pradesh, Mulayam Singh, remarked that “boys will be boys” and will indulge in some mischief here and there. There was a virtual parade of misogynist and sexist remarks that sought to lay the blame for sexual violence, especially rape, on the affected women through the two years.

It seemed as if these men – politicians, religious leaders, men in public offices – had not listened in to conversations around sexual violence in India, and had adamantly refused to change their medieval mind-sets alongside the changing India. The media was caught in a piquant situation: to report or not to report. Some of these highly objectionable statements and remarks were made to draw attention, and reportage would have given these views the oxygen they needed. Yet, not reporting widely would have left misogynists secure in their little wells, unchallenged by the larger society.

By and large, the English media reported and slammed them for their views. But a deeper examination of the media's coverage showed that it tended to adopt a neutral tone to sexual violence incidents that involved controversial persons with clout or large following whereas it seemed to lash out more when the police slipped up.

A test case of sorts for the India media, particularly the English media, was the Tehelka case in which the strapping middle-aged editor of the left-of-centre doggedly anti-Establishment weekly was accused by a young woman journalist on his staff, who was his daughter's friend and whose father he had worked with years ago, of sexually assaulting her to the point of rape in a posh hotel elevator in Goa. The editor Tarun Tejpal was not only well known but also good friends with a number of editors. While most of the media's carpet-bombing style coverage was sympathetic to the

survivor, a few titles, notably a respected weekly news magazine, de-constructed the sparse video footage of the elevator attacks to show that the survivor was to blame and perhaps was not telling the truth. If it was meant as a takedown, it was a shameful one and revealed that the media was eminently capable of misogyny, even when the survivor was from its own fraternity.

In February 2015, another powerful man, Dr. RK Pachauri, executive director of The Energy Research Institute of India (TERI) and the chairperson of the Nobel Prize awarded Inter-governmental Panel of Climate Change (IPCC) of the United Nations stepped down after two women anonymously accused him of sexual misconduct during their tenures as researchers in TERI; one of them, a 29-year-old researcher accused the 74-year-old Pachauri of sustained sexual harassment. It did not lead to a carpet-bombing of coverage against Pachauri and sexual misconduct of men in powerful positions.

Among the things that have not changed on the ground since the December 2012 gang-rape in Delhi are the deeply sexist and humiliating attitudes of the state machinery, most notably the local police which is the first face of society that a survivor of sexual violence comes across. Policemen remain untutored in the changes in law, unresponsive to newer and improved ways of handling sexual violence cases, and disdainful of the media's emphasis on women's safety in many cases. Similarly, the lower rungs of the judiciary where cases are first decided, judicial officers and lawyers make the most outrageous and offensive statements while arguing a case, with defense lawyers turning the courtroom cross-questioning into a "repeat rape" for the survivor.

Within various sections of the society, sexual violence – especially rape and molestation – continues to be yoked to the woman's honour and, by extension, to the honour of her family and society. Sections of the media have called out such offenders now and then, but the media finds itself ill placed to bring about a fundamental change in social attitudes to women's bodies and sexual crimes.

As the year 2014 closed, an assortment of elected representatives to the national Parliament, mostly from the right-wing Bharatiya Janata Party now in power, spoke of the Hindu woman's place in society advising her to have four and five children, and so on. This was in direct contrast to Prime Minister Narendra Modi alerting the nation in his Independence Day speech on August 15th about the need to treat girls on par with boys. The limited gains and improved national conversations around gender and sexual violence seemed to slide back all over again.

Yet another domain that remained untouched, and therefore unchanged, through the two years is that of marital rape, or rape within a marriage and sexual violence in a woman's home. There has been little media attention on this aspect. Admittedly,

these are difficult areas to cover but the media too has not ventured into homes while discussing sexual violence, considering it the domestic and private terrain.

MANY RAPES: SOME WORTHY VICTIMS, OTHERS UNWORTHY

A teenage girl steps out of her modest house in a village in Buldhana district, Maharashtra state, to relieve herself. She is raped. Two teenage cousins in a village in Badaun district in Uttar Pradesh, India's most populous and among the worst states for women's safety, step out at night ostensibly to relieve themselves. Hours later, they are found raped and hanged to death from a tree in the village. Months later, the Central Bureau of Investigation closes the case as one of suicides.

These are only two cases of many – one from a progressive state like Maharashtra and the other from a backward state such as Uttar Pradesh – that occurred in the two years after India was rudely shaken by the Delhi gang-rape. The Buldhana case hardly made news even in the state capital – and the country's financial capital – Mumbai. It remains recorded in police registers while the teenager hesitantly picks up her life again. The Badaun case made national headlines when it happened in May 2014. The national mainstream press tracked the horrific case in an intermittent manner till the chief investigation agency filed a report of suicide. Only a few publications and channels bothered to match the evidence known till then with the conclusion that the girls had committed suicide.

Through 2014, the less attractive parts of Delhi and Mumbai such as low-income housing areas and filthy slum colonies saw many rapes, especially of young girls barely into their teens. The India beyond the two largest cities registered rape cases, molestation cases and complaints and sexual harassment incidents in thousands; the NCRB reported 33,707 rapes in 2013. Almost none of them received a fraction of the attention lavished on some selective cases.

Highly selective selection of information – cherry picking of cases, if it can be put that way – is responsible for this. It is the inherent nature of the media to select some information and ignore the rest. But can the selection of rape cases and survivors in the last two years be put down to the function of selection of the dramatic information only? It would be difficult to argue this.

If so, the case of a 9-year-old girl raped last year should have made screaming headlines; most media with the exception of one language channel either ignored it or carried it as a routine crime story. She was whisked away while playing in the backyard of a lower-middle class colony in suburban Mumbai, raped and threatened with dire consequences, her face and private parts so badly mutilated that she spent more than three months in a hospital and went through a number of reconstructive

surgeries. This was a Mumbai suburb, not Buldhana. It cannot be the scale of brutality alone for then the 9-year-old girl's case would have been a big news story.

It would be correct to say that it is not merely selection of information, but a well-honed selectivity that is at work here. This selectivity is driven by various factors, some routinely used across newsrooms and others attributable to individual editors. But this selectivity renders some rape cases and survivors worthy of news and high noise while others get relegated to regular short stories or news clips or, worse, nothing at all. Some rape survivors/victims are worthy victims; others are not so worthy of media gaze, so the media seems to decide.

Despite the enhanced sensitivity, rape stories in urban areas naturally got more space and attention than those in the rural areas; rape survivors or victims who were identifiably middle or upper-middle class and represented the aspirational India received better coverage; rape survivors who could draw upon connections to women's groups, lawyers and activists managed to get better – at times more sensitive – coverage. The cases of Shakti Mill gang rape in Mumbai exemplify these points to a large extent.

Sexual violence and rape in urban slums and villages did not, by and large, make it to the headlines of leading newspapers and television channels unless there was unspeakable brutality and/or a special interest group (usually a women's activist group) persistently flagged off the issue for editors and correspondents.

EVENTS OVER PROCESS

Despite the heightened awareness in newsrooms since the horrific Delhi gang rape, certain disturbing characteristics of the media persisted.

First, a sexual violence or rape offence was treated as an event, a one-shot or spot story, with few or no follow-ups in a sustained manner into the cases reported. Indeed, the spot or the event is the news. But sexual violence or rape can be pinned down to a set of processes that may or may not have a direct cause-effect condition with the violence; instead, it creates or sets up an environment in which such acts of sexual violence are easily committed.

An enduring example is the relationship between toilets and sexual violence in slums and villages. The lack of in-house sanitation facilities puts women and girls in potentially dangerous situations as they venture out to common facilities or open fields in the dark. Another example is the relationship between lighting and sexual violence. Adequately and well-lit streets, pavements, taxi stands, public toilets and the like reduce the chances of sexual harassment and violence in such public places. Women's safety then is a function of design and architecture. Yet another example is of the procedures laid down in law to form grievance redressal and internal complaints

committees to deal with sexual harassment in the workplace, but followed only by a handful of organisations. The media rarely stepped beyond the events to trace out these and similar processes.

Second, there appeared to be a pattern to the media attention. In most sexual violence – especially rape – cases that get attention, the media concentrated its attention immediately after the incident but took its gaze off as the case meandered through the long and difficult medico-legal process. Even shocking rape cases often fall apart in the medical or legal arenas. There was little or no media attention at these stages; the hard-hitting questions were not always posed. An example, unfortunately repeated in case after case, is the medieval and purposeless two-finger test in which a doctor inserts fingers into the vagina to determine penetration and rape! A law banned it last year but doctors continue to use it. This issue did not get the attention it deserved.

Third, in a large majority of rapes and incidences of sexual violence which occurred in urban slums, the perpetrator or accused was known to the victim/survivor in some way, as confirmed by the local city police forces. The NCRB data too showed that a whopping 93% of the offenders are known to the victims/survivors to some extent. This has been reported in the media but most media did not sink teeth into it.

Similarly, there was another trend now perceptible in society but which did not receive adequate media attention: a young man and woman, often below the legal ages for marriage, eloped or had an affair, were later found and the woman filed a rape case against the man often under immense pressure from her family. Here, the charge of rape arose out of a personal relationship gone awry. Such cases take the society's focus and the police's resources away from genuine cases of sexual violence and rape.

Fourth, while the media focused on sexual violence and rape cases in public places among a certain profile of victims/survivors, it did not extend this attention – wittingly or otherwise – to a different set of sexual violence and rape cases. The most notable omissions include “institutional” rapes or sexual assault cases where men of the armed forces or police or para-military are the offenders, where subjugation and rape are used to oppress a local population often in the far corners of the country; sexual violence that results from legitimate anti-terror and counter-insurgency operations such as the Soni Sori case; and the increasing incidence of caste-based sexual violence where women of India's lowest castes and Dalit community are subjected to sexual violence and brutal rape as they challenge upper castes in their villages. This violence rarely made it to the headlines and most certainly did not stir the nation's conscience as the Delhi gang-rape case had.

One example should suffice. On December 31, 2014, a 14-year-old girl was

kidnapped and gang-raped by two Uttar Pradesh constables *inside* the Musajhag Police Station in Badaun district. One of the police constables was later arrested, but there was no outrage-driven reporting. It was a regular news item.

BEYOND REPORTAGE

Certain newspapers and channels stepped beyond their domain of only reporting to take a pro-active or activist stance on the issue of sexual violence in the last two years. Newspapers evolved campaigns around women's safety mostly limited to public places, such as "Make Mumbai Safer" in Hindustan Times and "Women Under Attack" in The Times of India. Television channels created special hash tags such as CNN-IBN's "Stop This Shame" to focus on violence against women. The glossy magazine Vogue ran its "Empower" programme focused on this issue. The language media too evolved special coverage on the issue.

Some of these campaigns created new platforms for interest groups to come together. After the brutal gang rapes in the Shakti Mill compound in July and August 2013, the Hindustan Times' "Make Mumbai Safer" (Ed: the author was part of this campaign) was an example. It took up research work done by the women's organisation Akshara in Mumbai and ran a survey-based safety audit of the city's public places such as the railway stations, bus network's and bus stops, gardens and playgrounds, markets and so on. The idea was to flag off how safe or not a particular route or area or playground was for women, and why it was so.

The campaign was then extended to create Round Tables, in cooperation with Akshara, on four themes that impacted women's safety: Urban design and architecture; Policing, law and justice; Awareness, education and popular media; and Politics and political parties' agendas. The Round Tables were joined by experts in each field. Their suggestions to "Make Mumbai Safer" were compiled into a Comprehensive Action Plan and submitted to the Maharashtra state chief minister. Every step of the campaign was widely reported in the newspaper, and readers were invited to add to the suggestions.

The plight of a suburban Mumbai girl who lay in the hospital without even the basic facilities extended by the state government was taken up as a campaign by the Marathi news channel IBN-Lokmat, after which she received better attention from the health care workers and the local police began to investigate the case.

This method of going beyond reportage raised the question in many circles about journalists turning activists on the issue of violence against women, especially sexual violence. It also elicited a few cynical reactions that the paper was doing this to boost its image and augment its circulation. Whether the campaign and the solution-side

activism and reporting helped the paper is a moot point but it did present a new template for reporting and writing, and in fact, approaching the issue of women's safety itself.

CONCLUSIONS

The December 2012 brutal gang rape in Delhi marked a shift in Indian society and the media. While it would be difficult to use broad-brush strokes for all media, it would be appropriate to point out that large sections of the media, especially in urban areas and within them the large metropolitan cities such as Delhi and Mumbai, devoted space to crimes against women, accorded it more prominence in terms of space (in print) and time (on television) than in the preceding years, and some sections evolved campaigns around the issue. Yet, there were gaps in the media's reporting of and approach to the broad theme of sexual violence itself, often ignoring or downplaying factors such as marital rape and violence by men in uniform.

Some broad themes:

- The perceptibly increased reporting and discussion of the issue tore away the earlier silence around it. There was an effort to de-link sexual violence, especially rape, from socially moored factors such as women's honour, her attire and life choices, and present it as a crime.
- The increased reporting was matched by a higher number of cases registered as more women came forth with complaints to the police. Social scientists are divided on whether the enhanced attention to sexual violence led to better reporting of cases to the police or whether there was in fact a relative increase in the number of such violent cases.
- There were fundamental changes effected in law, especially the Criminal Law (amendment) Bill of 2013 based on the Justice Verma committee's recommendations. Most of these were well reported and discussed in the media.
- The media kept a lens on the misogyny and sexist nature of conversations in the public domain, especially by people in high offices including politicians, and unequivocally condemned such statements. Similarly, cases of sexual violence or harassment by high-profile offenders such as judges, self-styled religious leaders and an editor were given prominence in large sections of the media.
- It has to be noted that despite the sustained focus on sexual crimes, especially rape, it did not find a place in the high-decibel general election campaigns – the noisiest, the most polarised and the most expensive ever in India – through

2013 ending with Narendra Modi swearing in as the prime minister in May 2014. Typically, an issue of grave concern at other times found little or no resonance in the political domain.

- The media highlighted certain cases of rape and molestation while down-playing others, in the process creating categories of “worthy” and “unworthy” victims/survivors. This is, at least partly, rooted in the media’s traditional biases such urban over rural, mainland over far corners such North-eastern states, random offenders against institutional offenders such as men in uniform, and so on.
- Marital rape and sexual violence in the domestic arena, two more difficult aspects of sexual violence, found less resonance and space than crimes in public places. In part, it can be traced to the media’s effort to tread carefully round the issue, separating the private from the public and concentrating on the latter. This has to do with the fact that marital rape is not yet legally recognised.
- Sexual violence, especially crimes such as rape, has fuelled an inexplicable rash of revenge-seeking behaviour and retributive justice from people across the country. The media dutifully reported this. Was it only reflecting and reporting the public sentiment of naked blood thirst or was it also fuelling this sentiment even as trials took years to be completed in most cases? It was a bit of both. It also helped that the dramatised and high-pitched reporting brought higher readership and viewership.
- Sections of the media went beyond the traditional reportage formats to evolve campaigns around the theme of sexual violence, especially sexual harassment and rape in public places.
- The widely accepted social axiom is that sexual violence, especially rape, should be seen as a crime and a break-down in both social norms and law-and-order. However, sexual offences are rooted in the wider society’s attitude to gender and women’s place in the social order. While the media focused, to a small extent, on the larger social fabric and climate in which sexual violence occurs, it did not consistently and adequately examine sexual crimes in the context of deeper under-lying biases, prejudices and mind-sets that foster the culture of sexual violence against women.

The media in India has moved a few significant steps ahead since the Delhi gang rape in December 2012. Yet, there remain miles to cover.

CHAPTER 9

CITADELS OF POWER AND IMPUNITY, DISTURBED BUT NOT DISLODGED

Evaluating the 2013 Law Reforms in the Anti Rape Law in India

Vrinda Grover

INTRODUCTION

The violent gang-rape and consequent death, of a young para-medical student, now referred to as *Nirbhaya*, on 16 December 2012, in New Delhi, compelled thousands to join the spontaneous public protests. The protestors foregrounded the routine and endemic nature of sexual violence experienced by women. The shame, silence and denial, that had for too long shrouded the reality of sexual violence, stood ruptured, as women claimed their right to equal citizenship, asserting the freedom to live, dress and love, without the omnipresent fear of violence. In the cacophony of public outcry, feminist activism challenging patriarchy, misogyny, structural inequality and embedded discrimination, jostled anxiously against the shrill cries for retribution, through castration and summary execution, of the 6 men accused of *Nirbhaya's* rape and murder.

Cries of “We want justice”, raised by the youth and particularly women, demanded from the State, justice, not only for *Nirbhaya*, but also to prevent, prohibit and punish, the pervasive and multiple forms of sexual violence suffered by women. The abject failure of the criminal justice system and the entrenched impunity for sexual violence against women could no longer be denied. To contain this public outrage the government on 23 December 2012, hurriedly appointed a three member Justice Verma Committee, to examine the lacunae in criminal laws and their enforcement in cases of “sexual assault of extreme nature against women”.¹

The Justice Verma Committee presented its comprehensive analysis and recommendations in a record one-month, in January 2013.² The Verma Committee Report mapped the socio-economic, cultural, political and juridical basis for sexual violence against women. Marking a paradigm shift it stated, “Another humiliating aspect of the crime against women is that her status in the patriarchal structure of

society also impedes her access to justice. The inequities of social status, caste prejudices, and economic deprivation further compound the gender injustice.”³

Drawing upon the fundamental right to equality, non-discrimination and the right to personal liberty and life, guaranteed under the Indian Constitution, the Report placed the onus on the State to ensure systemic and substantive equality for women in all spheres, as an imperative for violence against women to be diminished and erased. Sixty-three years after India became a Republic, the Committee drafted a Bill of Rights for women, spanning their entitlements in the private and public sphere.⁴ It stated, “Empowerment of women means the advancement of women as contemplated under Articles 14 and 21 of the Constitution through integrated strategies, frameworks, programmes, plans, activities, budgets, which aim to eliminate structural inequalities and which enable women to gain power and control over decisions and resources which determine the quality of their lives in a sustainable manner.”⁵

These wide-ranging proposals for transformative change however found scant resonance in the actions of the government, which limited itself to amendments to criminal laws. For almost three decades the women’s movement had been advocating for a change in the anti-rape law.⁶ It however took, a gruesome loss of life and an unprecedented public uproar, for an apathetic Parliament, blatantly protective of male privilege over women’s bodies, to unanimously pass the Criminal Law Amendment Bill, in February 2013.^{7,8}

The women’s movement critically interfaced with the Verma Committee and subsequently with Parliament on these legal reforms. Feminist engagement with law has been fraught and contentious, acutely cognizant that legal processes replicate hierarchies and prejudice, to obstruct justice. However in a milieu where subordination and violence against women, enjoys social approval, religious sanction and political patronage, the domain of the law becomes a necessary site of contestation.

In 1983, the Indian Supreme Court acquitted two police men charged with the rape of a young tribal girl, *Mathura*, at a police station, on the untenable grounds, that *Mathura* was “habituated to sex”, for there was an “absence of any injuries or signs of struggle” on her body and she had not “raised any alarm for help”. The agitation by the women’s movement led to the first phase of amendments to the rape law.⁹ Locating “custodial rape” at the intersection of state power and gender inequality, the jurisprudence of power rape was introduced; the burden of proof shifted on the accused entailing stringent punitive sentence. Additionally, all rape trials were to be conducted “in-camera” and a legal bar placed on the disclosure of the identity of the victim.

THE CRIMINAL LAW AMENDMENT ACT (CLA) 2013

Prior to the 2013 amendments, only outraging the modesty of a woman and peno-vaginal rape were arrayed as sexual offences against women, leaving many sexualized forms of harm, injury and humiliation without legal remedy. This gap in the Indian Penal Code (IPC) was corrected through the recognition of a gradation of different forms of sexual violence against women, as crimes. The amended law delineates prohibited male conduct and establishes a normative standard premised on bodily integrity and dignity of women.

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Gradation of Sexual Crimes: The amended IPC introduced a gradation of sexual offences, including sexual harassment; disrobing or parading a woman naked in public; voyeurism; stalking; and acid attack. A distinct statute also provides an in-house mechanism to counter sexual harassment of women at the workplace, which is recognized as a form of gender discrimination and hence a violation of fundamental rights.¹⁰ Public stripping and parading a woman is frequently deployed to humiliate and punish, particularly *dalit* and *adivasi* women, who challenge patriarchal, caste or other traditional forms of authority. The criminalisation of voyeurism, protects the privacy of a woman and thus penalizes any man who watches, photographs or disseminates images of a woman, in a state of undress or when engaged in private acts. Stalking, criminalises the following or monitoring of a woman, physically or electronically by a man to foster personal interaction, despite her clear indication of disinterest. During the Parliamentary debate in the Lok Sabha (House of People), prominent male

political leaders, expressed misgivings on codifying stalking and voyeurism as offences, for they confessed to having indulged in similar (mis)conduct to woo women.¹¹ In a context where the distinction between sexualized harm and romantic flirtation is blurred, the clear articulation of penal law acquires significance. Stalking, has forced women to drop out of school, college, switch jobs, even change residence, to escape the terror of the stalker. Acid attack is a particularly egregious crime, where a mere refusal by a woman to form a romantic liaison with the male suitor, can have devastating consequences, physically and otherwise. With acid, easily available for over the counter purchase, this crime has seen a sharp rise.¹²

Feminists advocated, that S. 354 IPC dealing with molestation, be redrafted, and the problematic patriarchal notion of “outraging a woman’s modesty”, be purged from the legal lexicon and replaced with the phrase “violation of a woman’s bodily integrity and dignity”.¹³ Parliamentarians however expressed their inability to comprehend what constitutes, the ‘dignity of a woman’!

Redefining rape: Marking a clear departure from the patriarchal framing of rape which proscribed only peno-vaginal penetration, the CLA 2013 enlarged the scope of rape offence to include all non-consensual sexual penetration by a man of a woman, including, peno-anal, peno-oral, and penetration by any other body part, or object into any orifice of the woman. According primacy to the notion of bodily integrity and centrality to the consent of the woman, the rape definition now reflects the violations suffered by women, rather than the anxieties of safeguarding lineage. It also defines consent, as an unequivocal, voluntary agreement that communicates willingness on the part of the woman to engage in that specific sexual act and further clarifies that the absence of physical resistance does not imply consent to the sexual act.

Marital Rape Excluded: The primacy accorded to a woman’s sexual autonomy and agency, however does not extend to a wife who is above 15 years of age. The law retains the Exception that excludes marital rape from the offence of rape. The concession made by CLA 2013 was to extend the purview of rape to any wife living separately, though entailing a lighter prison sentence. Thus the privileging of the husband’s dominion over the wife’s body continues. Interestingly, the Protection of Women from Domestic Violence Act, 2005, a civil law, enumerates “sexual abuse”, as a form of domestic violence and offers legal protection against the same. Feminists have flagged this aberration in law and with ongoing public debates marital rape remains an agenda for future law reform.

Age of Consent: Under the 1983 rape law, penetrative sexual acts below the age of 16 years, was criminalized as ‘statutory rape’. The Protection of Children from Sexual Offences Act, 2012, however introduced 18 years as the age below which the consent for sexual act would be legally irrelevant. Taking advantage of this dichotomy, conservative forces in Parliament also raised the age of consent in the CLA 2013 to 18 years, in the face of stiff opposition from feminists. Surveys in India provide evidence of increased consensual sexual activity between young persons in the age group of 16-18 years.¹⁴ This amendment is regressive on many counts, it strengthens the stranglehold of family and community to control sexual agency and maintain the status quo, by invoking rape charges in inter-caste and inter-religion relationships, of young persons aged 16-18 years. A recent analysis shows that almost 40% of rape cases decided in Delhi in 2013 were of ‘consensual sex’ between young persons, criminalised by the 2013 amendment.¹⁵ It is precisely these cases that provide fodder to proponents of ‘misuse’ of rape law.

No Protection for Transgenders and Men from Sexual Violence: A noticeable lacunae in substantive law is the absence of protection for transgender persons and men from sexual violence. Evidence suggests that they are subjected to heinous sexual abuse and assault, particularly at police stations, jails, during caste atrocities,¹⁶ necessitating the introduction of specific crimes of sexual assault, for their protection. With consent underpinning the 2013 amendments, the case for the repeal of Sec. 377 IPC, that criminalises consensual same-sex relations, becomes invincible.¹⁷

Structural and Procedural Impediments: For sexual violence to diminish and conviction rates to improve, much more than amendment to the substantive law is required. Impunity for sexual violence against women preys upon the fault lines in the legal system viz. institutional bias; systemic sexism; partisan and misogynist investigation; degrading medical examination; traumatic and harsh legal proceedings.

Bias: Contempt and suspicion shadow the rape victim, from the police station to the courtroom. Lodging a First Information Report (FIR), the first prerequisite for accessing justice, is invariably an insurmountable hurdle. The underlying malaise stands revealed from the official reply of Uttar Pradesh police stations to a Right to Information (RTI) application that enumerates, “mobile and internet culture, western influence and indecent dressing sense among women” as some of the reasons behind the rise in rape cases.¹⁸ To preclude this, clear and precise protocols, prescribing the mode of police functioning, must be adopted.

Police Accountability: To obviate this mindset among law enforcement officials, CLA 2013, penalizes the refusal of the police, to lodge a FIR, or investigate an offence of sexual violence in contravention of the law, and to the prejudice of the victim, as a crime, with a mandatory six-month sentence. This is a milestone in securing institutional accountability. However due to the “brotherhood of *Khaki*” among the police, it remains unenforced.¹⁹

Sexism: The contestation between misogyny and dignity is palpable even in judicial verdicts. While one trial court rebukes women, “The girls are morally and socially bound not to indulge in sexual intercourse before a proper marriage and if they do so...they cannot be heard to cry later on that it was rape.”²⁰ Another trial judge, states, “It may be reiterated that simply because the victim was working as a sex worker before the incident in question, does not confer any right upon anyone to violate her dignity or to rob her and can certainly not be a ground to award lesser than the minimum prescribed punishment.”²¹

Character and Past Sexual History: To avert the rape trial being converted into an inquisition of the woman victim, the CLA 2013 explicitly excludes as irrelevant and inadmissible evidence relating to the character or past sexual history of the victim. The significance of this amendment cannot be overemphasized, for although the Supreme Court has held that a woman victim is not an accomplice in a crime of rape²², the ghost of the *Mathura* judgment continues to stalk rape investigation and trials. Supreme Court judgments hold that the sole testimony of the rape survivor, if credible and consistent is sufficient for purposes of conviction.²³ The legal system however continues to furtively seek corroboration, from the body of the victim, as suspicion, disbelief and prejudice against the rape victim runs deep.

Dubious Medical Examination and Insidious Findings: Studies conclude that usually sexual assault causes no physical injuries. The Supreme Court stated, “*Rape is a crime and not a medical condition....Whether the rape has occurred or not is a legal conclusion, not a medical one.*”²⁴ Clarifying that injuries cannot be a measure of absence of consent, the Court stated, “*It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal part of the victim.*”²⁵ Despite such clear jurisprudence, the absence of physical injuries casts aspersions on the veracity of the accusation of rape.²⁶

In contravention of law and policy, the per-vaginum or “2 finger test”, is routinely conducted to note the size of vaginal introitus, elasticity of the vagina or the nature

and tear on the hymen. These are in turn used to interpret the character of the rape victim and read immorality into her past. Reference to the victim's character, enters the courtroom through the pretext of the medical report, where the inference of "habituated to sexual activity", prejudices the trial, and allows the accused to make the claim that the sexual act was consensual. Cautioning against this the Supreme Court has stated, "*Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question...It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.*"²⁷ The Supreme Court also held that "*undoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.*"²⁸

Right to medical treatment: Emphasizing the dignity of the rape survivor the Court observed, "*Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence.*"

The CLA 2013 casts a statutory duty on all health facilities, public and private to provide first aid and treatment, free of cost to all survivors of sexual violence and acid attack. Failure to respect this legal obligation is now an offence.

In March 2014, the Union Health Ministry issued Model Guidelines and Protocol, prescribing consent and dignity of the rape survivor as the guiding principles.²⁹ It clarifies that medical findings, if any, are only corroborative and not determinative in cases of rape.³⁰

Low Conviction Rate: While the 2013 NCRB data discloses an encouraging trend of reporting by women of sexual violence, the low conviction rate is worrisome.³¹ It underscores that access to justice remains arduous, harsh and the trial procedure insensitive. An analysis by *The Hindu*, of 583 rape cases decided by Delhi District Courts in 2013, indicate that one-fifth of the cases ended in acquittal as the woman victim either turned hostile (i.e. won't confirm earlier evidence or statements to the law enforcement agencies) or did not appear in court to testify.³²

Many institutional and procedural gaps contribute to this high level of attrition: protracted and insensitive trials with cross-examination retraumatizing the rape

survivor; the absence of a robust witness-victim protection programme; lack of paralegal support to enable the woman victim to navigate the criminal trial;³³ and an indifferent prosecution to represent her.

Fast track court: Delay is the bane of the Indian criminal justice system.³⁴ To meet the rape victim's right to speedy justice, CLA 2013 provides for a rape trial to conclude within two months and in some cities fast track courts constituted. However except for a few high profile trials, most languish for months if not years.³⁵

Witness protection: The recommendations of the 198th Law Commission of India's report and Supreme Court judgments for a comprehensive victim-witness protection programme have not been acted upon.³⁶ To secure redress for the violation of their dignity, women have to stake their lives, confronted by threats, often in equivalence of socioeconomic status.³⁷

Punishment and Sentencing: Public fury asked for castration³⁸ and the penalty of death to be imposed as punishment for rape. This clamour was determinedly opposed by the women's movement. The movement resisted the notion that rape was a fate worse than death, and argued that with a conviction rate as low as 26% certainty and not severity of punishment would create prevention.³⁹ With no proven deterrence, the spectacle of hanging a few convicted rapists would distract public vigil to ensure that the state meets its obligations to create conditions for equality and safety for women. The Verma Committee accordingly abjured prescribing the death sentence.⁴⁰ But introduced death penalty for three circumstances, where the injury inflicted in the course of the commission of the rape caused the woman to die, or be in a persistent vegetative state; and for repeat offenders, thereby creating a new class of "rarest of rare" cases.⁴¹ To appease the outcry, CLA 2013 also introduced imprisonment for the remainder of the accused's natural life, as a sentence. Such stringent and harsh sentences have failed to lower the graph of sexual violence, as the conviction rates remain dismal.⁴²

Compensation: Developing a more holistic notion of justice, law, policy and judgments now award compensation to the rape victim-survivor. Holding rape to be a failure of the State to protect the fundamental rights of the victim, the Supreme Court directed the State to provide substantial compensation (in the range of INR 5,00,000- 10,00,000) and assist in rehabilitation.⁴³ The CLA 2013 through the Cr.P.C., clarified that the rape victim was entitled to compensation for the injury suffered, from the scheme evolved



Photographer: Ramesh Lalwani

by the State independent of criminal trial proceedings.⁴⁴ Indian jurisprudence is however yet to articulate the rape survivor's right to reparation, and not just compensation.⁴⁵

Aggravated Rape: Feminist documentation and analysis of the marked targeting of women's bodies, during communal attacks; caste violence; and in zones of conflict with intensive militarization, have expanded the understanding of coercive circumstances, where power rape is perpetrated. The CLA 2013 enlarged the categories of aggravated rape beyond the precincts of the police station; jail; hospital; remand home; women's institution; to include areas under the operation of armed forces; rape by a person in a position of trust or authority; or control or dominance; or during communal or sectarian violence. In cases of aggravated rape, the burden of proof shifts to the accused and a rebuttable presumption of absence of consent is raised against

him.⁴⁶ This expansive categorization of situations of power rape reflects the brute reality of women's existence, with their vulnerability and discrimination heightened, by the intersectionality of gender, class, religion and ethnic locations. Pertinently, CLA 2013 did not classify caste as a specific category, even though impunity for sexual assault of *dalit* women is endemic.⁴⁷ Sec. 376(2)(g) IPC has for the first time been invoked in cases of gang-rape of Muslim women during the Muzaffarnagar communal attack of September 2013, when clashes between Muslims and Hindus left 62 dead and many injured and displaced.⁴⁸

Sexual assault of women in Kashmir, Manipur, Nagaland and other states of Northeast, where armed forces operate under the legal cover of the Armed Forces Special Powers Act (AFSPA), by men in uniform, have rarely ever been probed, prosecuted or punished, spawning a culture of impunity.⁴⁹ Sexual Violence here is an act of domination grounded in a complex web of gendered cultural preconceptions, deployed to torture, humiliate, or punish, a group, terrorizing not just the victim, but the entire community.⁵⁰ In Kashmir, complaints of a mass sexual assault by the army, of women of Kunan and Poshpora, in 1991, were dismissed as militant propaganda and have not been investigated till date.⁵¹ To obstruct investigation into the rape and killing of Thangjam Manorma in Manipur, the Assam Rifles, sought refuge under the clause of prior sanction clause for criminal prosecution of members of the armed forces, in Sec. 197Cr.P.C. and AFSPA 1958.⁵² The law also bestows on the armed forces the discretion to claim court martial to prosecute the officer accused of rape, thus trumping the woman victim's right to fair trial before the ordinary court.⁵³

As a first step towards disabling this absolute impunity, CLA 2013 has added an Explanation stating that no sanction shall be required for the court to prosecute a public servant accused of sexual offences.⁵⁴ However, with no corresponding dilution of the legal immunity clause under AFSPA, and the prioritisation of court martial, the deep roots of impunity remain firmly entrenched.⁵⁵

Conspicuous by its absence is a similar amendment to the Kashmir code to surmount the hurdle of legal immunity, occasioned by S. 197 Cr.P.C.⁵⁶ Even post the 2013 amendments, the prior sanction clause can still come to the aid of the armed forces, in Jammu and Kashmir, to escape prosecution in a case of sexual violence. The question that needs to be asked, can the rape of a woman by a man in uniform ever be committed while acting or purporting to act in the discharge of official duty, to protect the country?

Even without the legal immunity shield, in anti-Maoist counter insurgency operations, in Chhattisgarh, sexual violence of women by the security forces is routinely overlooked. The tribal teacher and activist Soni Sori's complaint of custodial

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sexual torture, confirmed by medical examination, evoked no institutional ire.⁵⁷ Rather the accused police officer received the President's Gallantry award.⁵⁸ Such omissions by the State in the name of national security embolden sexual violence against women of vulnerable groups.⁵⁹

CONCLUSION

The amended laws are yet to create deterrence and diminish sexual violence against women. The absence of enabling and sensitive structures and processes, discourage victims from accessing courts. The failure to allocate and utilize funds demonstrates the lack of political will. The backlash is already upon us as whispers of 'misuse' and 'false cases' gain momentum and call for the law to be whittled down. There is an urgent need for a comprehensive monitoring and

evaluation of the legal amendments, if law is to translate into justice and transform lives. In the political sphere, shrill slogans of women's safety and attempts by orthodox forces to shackle women's sexuality threaten to drown the aspirations of equality and freedom. The chants of *Azaadi* (the Urdu term for freedom), that reverberated across Raisina Hills, in December 2012, may reduce to a faint echo, unless each manifestation of impunity, irrespective of its location and visage, is challenged and defied.

Endnotes

- 1 The Committee was constituted by GOI Notification No. S0 (3003)E, dated December 23, 2012 to look into possible amendments to the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women.
- 2 The J. Verma Committee received emails from a cross section of people and heard representatives of the women's movement.
- 3 Verma Committee Report, *supra* note 1, at 14. Available at: http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf (last accessed on January 20, 2015)
- 4 Verma Committee Report, *supra* note 1, at 429.
- 5 Verma Committee Report, *supra* note 1, at 43.
- 6 Responding to the Criminal Law Amendment Bill, 2010 proposed by the UPA Government, the women's movement held two national consultations and submitted an alternative draft legislation for protection of women, children, and sexual minorities from sexual violence to the then Union Home Secretary, Mr. G.K.Pillai.
- 7 The Criminal Laws (Amendment) Ordinance was promulgated on February 3, 2013 and the Criminal Laws (Amendment) Act was enacted on April 2, 2013. Lok Sabha, Statutory Resolution and Government Bill, Discussion on the Statutory Resolution regarding Disapproval of Criminal Law (Amendment) Ordinance, 2013 and Criminal Law (Amendment) Bill, 2013 (March 19, 2013), available at <http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=9781>.
- 8 Ashish Mukherjee, *Women's Groups Reject Ordinance on Rape to Sign it* (February 2, 2013) available at <http://www.ndtv.com/article/india/women-s-groups-reject-ordinance-on-rape-laws-urge-president-not-to-sign-it-325628>.
- 9 *Tukaram and Anr v. State of Maharashtra* (AIR 1979 SC 18) The Supreme Court observed that, "Mathura is habituated to sexual intercourse, as is clear from the testimony of Dr. Shastrakar," and "The seminal stains on Mathura can be similarly accounted for. She was after all living with Ashok and very much in love with him." It was also stated that, "no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false." In the face of nationwide protests by women's groups, in 1983, the government passed the Criminal Law Amendment Act.
- 10 Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 available at: <http://wcd.nic.in/wcdact/womenactsex.pdf>
- 11 Lok Sabha, Statutory Resolution and Government Bill, Discussion on the Statutory Resolution regarding Disapproval of Criminal Law (Amendment) Ordinance, 2013 and Criminal Law (Amendment) Bill, 2013 (March 19, 2013), available at <http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=9781>.
- 12 Lakshmi Chaudhry, "Politicians united against women: Hey, stalking is romantic!" March 19, 2013 available at: <http://www.firstpost.com/politics/politicians-united-against-women-hey-stalking-is-romantic-666625.html>
- 13 Kamal Kumar, "Acid Attacks: A scar on India", January 24th, 2014, available at: <http://www.aljazeera.com/indepth/features/2013/09/acid-attacks-a-scar-india-2013927165429393354.html>
- 13 Section 354 IPC: – Assault or criminal force to woman with intent to outrage her modesty. –Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall be liable to fine.
- 14 Nisha Susan and Nishita Jha, "Sex, Lies and Homework", April 24th 2010, available at: http://archive.tehelka.com/story_main44.asp?filename=Ne240410coverstory.asp
- 15 Damayanti Dutta, "Age of confusion", March 22nd 2013, available at: <http://indiatoday.intoday.in/story/age-of-consent-sex-parliament-debate/1/259007.html>
- 15 Rukmini S., *The Many Shades of Rape Cases in Delhi*, *The Hindu* (July 30, 2014), available at <http://www.thehindu.com/data/the-many-shades-of-rape-cases-in-delhi/article6261042.ece>; Rukmini S., *Young Love often Reported as Rape in our 'Cruel Society'*, *The Hindu* (July 31, 2014), availa-

ble at

<http://www.thehindu.com/news/national/stories-behind-sexual-assault-rulings-shine-light-on-reality-of-rape/article6265285.ece?ref=relatednews>

- 16 "Human Rights violations against sexual minorities in India", A PUCL-K fact-finding report about Bangalore, February 2001, available at: <http://www.pucl.org/Topics/Gender/2003/sexual-minorities.pdf>
- 17 S.377 IPC- Unnatural offences. — Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.— Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.
In *Naz Foundation v Government of NCT, Delhi*, (2009) 111 DRJ (1) DB the Delhi High Court read down S.377 IPC to exclude sexual activity between consenting adults in private.
On an appeal preferred by the respondents, the Supreme Court overturned the High Court verdict in *Suresh Kumar Koushal v. Naz Foundation* (2014)1SCC1 and currently the Supreme Court is hearing a curative petition filed by the Naz Foundations and other petitioners.
- 18 *Mobiles, Western Culture, Indecent Dressing Reasons for Rape: UP Police*, October 30th 2014, <http://www.newindianexpress.com/nation/Mobiles-Western-Culture-Indecent-Dressing-Reasons-for-Rape-UP-Police/2014/10/30/article2500521.ece>
- 19 The Supreme Court has observed on several occasions, that bound as they are by the ties of brotherhood, it is not unknown for police personnel to remain silent or pervert the truth to save their colleagues. See *Prithpal Singh and Ors v State of Punjab* (2012) 1 SCC 10 at paragraph 75. *Munshi Singh Gautam v. State of M.P.* (2005) 9 SCC 631 at paragraph 6
- 20 *State v Sushil Kumar*, S.C No.34/2013, Special Fast Track Court, Dwarka dated October 7th 2013 and *State v Ashish S.C.No. 109/2013*, Special Fast Track Court, Dwarka dated December 20th 2013 both delivered by Justice Virender Bhatt. Subsequent to the first judgment the Delhi High Court in *Suo Motu Cognizance v. Sua Motu Cognizance* (W.P. (C) 8066/2013), pointed out the bias in the decision.
- 21 *State v Deepak*, S.C No. 57/2013, Special Fast Track Court- 2, Tis Hazari dated November 1st 2014.
- 22 *Om Prakash v. State Of U.P.*, AIR 2006 SC 2214
The Supreme Court of India held that, "A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence."
- 23 *Mukesh v State of Chhattisgarh* (2014) 10 SCC 327
State of Punjab v. Gurmit Singh (1996) 2 SCC 384
- 24 *State of Tamil Nadu vs. Raju @ Nehru* (2006) 10 SCC 534
- 25 *State of UP v. Chhotey Lal* (2011) 2 SCC 550 at paragraph 25.
- 26 *Achey Lal v State Govt of Delhi CRL.A No. 1534/2011*, Delhi High Court dated 30.10.2014 "...However, besides the injuries on the vagina there is no other injury mark on the body of the deceased or on the appellant to show that there was any protest by the deceased. Hence we are of the opinion that it has not been proved beyond reasonable doubt that the appellant committed sexual intercourse with the deceased contrary to her wishes or her consent." (Para 9)
- 27 *State of UP V. Pappu @ Yunus and anr* (2005) 3 SCC 594 at paragraphs 11, 12.
- 28 *Lillu @Rajesh v State of Haryana* (2013) 14 SCC 643 at paragraphs 2,5
- 29 Ministry of Health and Family Welfare "Guidelines and Protocols: Medico-legal care for survivors/victims of sexual violence", March 19th 2014, available at: <http://www.mohfw.nic.in/showfile.php?lid=2737>
- 30 *Ibid.*
- 31 See <http://ncrb.nic.in>
Reported rapes increased from 16,075 in 2001 to 33,707 in 2013. A more than 50% increase (NCRB, 2014). Conviction rates have declined from 44% in 1973 to 27% in 2013. Cases pending investigation in the beginning of 2013: 47, 457. Charge sheet submitted: 28, 755 (60%). Investigations still pending: 14,940 (31 %). Trials were completed in -18,833 cases (39%).
- 32 *Rukmini S., The Many Shades of Rape Cases in Delhi, The Hindu* (July 30, 2014), available at <http://www>.

- thehindu.com/data/the-many-shades-of-rape-cases-in-delhi/article6261042.ece;
- 33 In the 'Shakti Mills' case, the victim fainted in Court when pornographic clips were shown to her as part of the evidence gathered. Flavia Agnes, "Shakti Mills gang rape victims seek change in Juvenile Justice Act" December 26th 2013, available at: <http://archive.indianexpress.com/news/shakti-mills-gangrape-victims-seek-change-in-juvenile-justice-act/1211767/0>
 - 34 Krishnadas Rajagopal, "Criminal justice process itself a punishment, says CJI". August 16th 2014, available at: <http://www.thehindu.com/news/national/should-complete-criminal-trials-in-three-years-says-cji/article6321467.ece>
 - 35 In the seven cases of gang-rape during communal violence in Muzaffarnagar, Uttar Pradesh in September 2013, the FIR's were filed by October 2013 however the charge sheets which according to law are to be filed within 3 months were only filed by May 2014. The trials have yet to commence despite legislation mandating that trials in cases of sexual offences are to be completed within a period of 2 months from the filing of a charge sheet.
 - 36 Law Commission of India, "Report on Witness Identity Protection and Witness Protection Programmes," 198th Report, 2006 at Chapter VIII, Section (A) at Page 110, available at: <http://lawcommissionofindia.nic.in/reports/rep198.pdf>
 - 37 *Zahira Sheikh v State of Gujarat* (2006) 3 SCALE 104 at Para 41.
 - 38 In *Mohd Haroon v UoI* (2014) 5 SCC 252 the Supreme Court directed the State Government to provide security to the 7 Petitioners who were victims of gang rape during communal violence until the completion of the trials, however despite the security provided by the State, the Petitioners continue to live in a state of fear, anxiety and insecurity. The delay in filing of charge sheets and ensuring that trials against the named accused persons commence at the earliest, has encouraged intimidation and coercion to continue on behalf of the accused persons. Further, due to the granting of bail to some of the arrested accused, the Petitioners and their witnesses continue to face a grave and real threat to their personal safety and the safety of their family members.
 - 38 After considering castration as a punishment to persons convicted of sexual offences, the Justice Verma Committee declined to recommend the same observing that "castration fails to treat the social foundations of rape which is about power and sexually deviant behaviour." at para 42, page 253. Report of the Committee on Amendments to Criminal Laws (January 23, 2013), comprising of Justice J.S. Verma (Retd.), Justice Leila Seth (Retd.) and Mr. Gopal Subramaniam, Available at: http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf (last accessed on January 20, 2015)
 - 39 "Statement by women's and progressive groups and individuals condemning sexual violence and opposing death penalty" December 24th 2012, available at: <http://kafila.org/2012/12/24/statement-by-women-and-progressive-groups-and-individuals-condemning-sexual-violence-and-opposing-death-penalty/>
 - 40 Verma Committee Report, *Ibid* 1, at Para 23, at pg. 245
"In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women's organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, in the larger interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty."
 - 41 Criteria for determining whether a case is rare of rare can be found in *Bachhan Singh v State of Punjab* (1980) 2 SCC 684 at Para's 38-40.
 - 42 Conviction rate in cases of rape (S.376 IPC) in 2012- 24 % and 2013-27 %
 See Table 4.12 <http://ncrb.nic.in/CD-CII2012/Statistics2012.pdf> and Table 4.12, <http://ncrb.gov.in/>
 - 43 While acknowledging that no amount of compensation can provide respite to a victim-survivors of sexual violence, the Supreme Court has in several cases directed State governments to pay compensation to survivors of sexual violence in lieu of the government's failure to protect and prevent the violation of the fundamental rights of such victim-survivors:
In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014 (Suo Motu Writ Petition (CrI) No. 24/2014) directed State to enhance compensation

from Rs.50,000 to Rs. 5 lakhs to be paid to a woman who was gang raped on the orders of her community as punishment for being in a relationship with a man from a different community.

In *Mohd. Haroon v UoI* (2014) 5 SCC 252 directed the State to pay compensation of Rs. 5 lakh and provide other rehabilitation to each of the 7 women Petitioners who were survivors of gang rape during communal violence.

Satya Pal Anand vs. State of M.P. (2014) 4 SCC 800 enhanced interim relief from Rs.2 lacs to Rs.10 lacs each to the two Dalit girls who were gang-raped by men from the dominant caste.

- 44 25 out of 29 State governments have notified victims-compensation schemes wherein the discretion to determine the amount of compensation has been given to the District Legal Service Authority, in accordance with the 2005 amendment to the Criminal Procedure Code, however the Supreme Court has observed that the same is yet to be implemented effectively. The Maharashtra State government in 2013, launched the Manodhairy Scheme aimed at providing financial, medical and legal aid, rehabilitation and counseling to survivors of rape and child abuse. See more at:
<http://www.firstpost.com/mumbai/maharashtra-launches-manodhairya-scheme-for-victims-of-rape-abuse-1102131.html>
- 45 CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women" CEDAW/C/IND/CO/SP.1, October 22nd 2010 at Para F.35 (a) and (e), 'Recommendations' available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CE-DAW%2FC%2FIND%2FCO%2FSP.1&Lang=en
- 46 Sec 114A, Indian Evidence Act, 1872. *Supra* note 9.
- 47 Priyanka Dubey, "A Portrait of the Indian as a Young Dalit Girl" September 10 2014, available at: <https://in.news.yahoo.com/a-portrait-of-the-indian-as-a-young-dalit-girl-034726310.html>
See also, National Campaign on Dalit Human Right, <http://www.ncdhr.org.in/>
- 48 Initially the 7 FIRs of gang rape were registered under S. 376 D IPC (Gang rape). It was only after the Victims filed a Contempt Petition in the Supreme Court (Contempt Petition Civil No.479/2014) alleging malafide in investigation that this provision was added by the police.
See also: Neha Dixit, "Shadow Lines", August 4th 2014 available at: <http://www.outlookindia.com/article/Shadow-Lines/291494>
- 49 S.6, Armed Forces (Special Powers) Act 1958, and S.7, Armed Forces (Jammu & Kashmir) Special Powers Act, 1990
- 50 CEDAW Committee, "General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations" CEDAW/C/GC/30, October 18 2013, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/GCComments/CEDAW.C.CG.30.pdf>
CEDAW Shadow Report, "Women in Conflict Prevention, Conflict and Post Conflict Situation" 2014
- 51 February 1991, Kunan Poshpora, Kashmir: Women of the neighbouring villages of Kunan and Poshpara, in Kashmir, claim that, during a search and cordon operation, personnel of the 4 Rajputana Rifle of the Indian Army sexually assaulted and raped many women, with numbers of victims ranging between 23-50 women. In January 2015 the Jammu and Kashmir High Court stayed the order of the judicial magistrate directing re-investigation into the case.
See: "Konan Poshpora mass rape: 22 years on, state still out to scuttle probe" Indian Express, 24th February, 2014. Available at-
<http://archive.indianexpress.com/news/konan-poshpora-mass-rape-22-years-on-state-still-out-to-scuttle-probe/1140570/0>. Accessed 9th April 2014.
- 52 Manipur, 2004: A judicial inquiry into the death of Manorama has found that she was mercilessly tortured before being shot dead by a team of the 17 Assam Rifles regiment of the Indian Army.
W.P.(C) No.5187 of 2004 was filed before the Guwahati High Court by Col. Jagmohan Singh, Commandant of 17th Assam Rifles challenging the competence of the State of Manipur to appoint a Commission of Inquiry, in view of the prior sanction Sec.6 AFSPA, 1958. Judgment of the Guwahati High Court-Col. Jagmohan Singh and Another v. State of Manipur and Others 2010 (4) GLT 1014
The case is currently being heard by the Supreme Court-'Manorama murder case reaches Supreme Court,' The Times of India, 11th July 2011, available at <http://timesofindia.indiatimes.com/city/guwahati/Manorama-murder-case-reaches-Supreme-Court/articleshow/9190153.cms> (last accessed 13th May 2014).
The Report of the Judicial Inquiry-Krishnadas Rajagopal, "Manorama 'mercilessly tortured'" No-

- vember 14 2014, available at: <http://www.thehindu.com/news/national/manorama-death-brutal-torture-probe-panel/article6596278.ece>
- 53 S.1, S.3(2) and S.70, Army Act, 1950
- 54 Section 197 Cr. P.C. mandates that the Court shall not take cognizance of any offence committed by a member of the Armed Forces or the Central Armed Police Forces, unless prior sanction is secured from the concerned government/ competent authority, however the 2013 Amendment has inserted the following: *"Explanation—For the removal of doubts it is hereby declared that no sanction shall be required in case of public servant accused of any offence alleged to have been committed under sections 166A, 166B, 354, 354A, 354B, 354C, 354D, 370, 375, 376, 376A, 376C, 376D, or section 509 of the IPC."*
- 55 Verma Committee Report, Ibid at paragraph 11, page 171: "At the outset, we notice that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country. It must be recognized that women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country. India has signed the International Convention for the Protection of All Persons from Enforced Disappearance, which has to be honoured. We therefore believe that strong measures to ensure such security and dignity will go a long way not only to provide women in conflict areas their rightful entitlements, but also to restore confidence in the administration in such areas leading to mainstreaming." 'Recommendation': at para 12, page 151:
 "12(g) There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible. This is necessary for determining the propriety of resorting to this legislation in the area(s) concerned; 12 (h) Jurisdictional issues must be resolved immediately and simple procedural protocols put in place to avoid situations where police refuse or refrain from registering cases against paramilitary personnel."
- 56 The Jammu and Kashmir Criminal Laws (Amendment) Act, 2013 (Act No. XI of 2014), 22nd March 2014.
- 57 Tusha Mittal, "Shocking, Soni Sori Has Been Sexually Tortured With Stones. Who Will Answer For This?" December 24th 2011, available at: <http://www.tehelka.com/shockingly-soni-sori-has-been-sexually-tortured-with-stones-who-will-answer-for-this/>
- 58 Sonal Mehrotra, "Outrage over gallantry award for Chhattisgarh police officer" January 30th 2012, available at: <http://www.ndtv.com/india-news/outrage-over-gallantry-award-for-chhattisgarh-police-officer-571276>
- 59 CEDAW Committee, "Concluding observations on the combined fourth and fifth periodic reports of India*" CEDAW/C/IND/CO/4-5, July 18th 2014 at paragraph 12, 13(b) available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2F-C%2FIND%2FCO%2F4-5&Lang=en

CHAPTER 10

IMPLICATIONS OF THE CHANGES IN RAPE LAW ON HEALTH SECTOR

A Case for paradigm shift

Padma Bhate-Deosthali and Sangeeta Rege

INTRODUCTION

The outrage and protests following the brutal assault of a young health student compelled the Government of India to take cognisance of sexual violence. One of the immediate responses by the state was to set up the Justice Verma Committee (JVC) which produced a report within a month with clear recommendations about what needs to change within various institutions in order to respond sensitively to survivors of sexual violence and guarantee justice and care for them. The JVC report included an entire chapter that addressed institutional bias to rape within the health system. Amongst the recommendations pertaining to the health sector, one was for developing uniform protocols and guidelines in responding to sexual violence. This included strong recommendations for the removal of insensitive and unscientific procedures that traumatize survivors. The report further recommended the setting up of services for the provision of psycho-social care and rehabilitation of survivors of sexual violence. The Criminal Law Amendment Act (CLA) 2013 expanded the definition of rape to include all forms of sexual violence-penetrative (oral, anal, vaginal) including by objects/weapons/fingers and non-penetrative (touching, fondling, stalking, disrobing etc) – and recognised the right to treatment for all survivors of sexual violence by public and private health care facilities. Failure to treat is now an offence under the law. The law further disallows any reference to past sexual practices of the survivor.

The CLA 2013 has made a strong case for transforming the response of the health sector to sexual violence. In India, the health sector does not recognise violence against women as a public health issue. India lacks a national health policy to address violence against women. It is absent from health policy and programme. Although all victims/survivors of violence (of any form) are either brought to the doctor or come on their own, the medical profession may not recognise violence and its consequences or provide comprehensive care and treatment. One of the issues that women and health activists raised was the insensitivity of the health sector and the

use of unscientific and anti-women practices of forensic medicine such as making comments on virginity and past sexual history through the use of the two-finger test. At the same time, there was also focus on good practice. An evidence based model¹ set up by CEHAT and the Municipal Corporation of Greater Mumbai that had provided comprehensive care and treatment to a large number of rape survivors was discussed in various fora (Rege et al, 2014). CEHAT made a written submission along with the Lawyers Collective to the JVC and consistently worked with the media and others to focus on the need to upscale this model.

Taking cognizance of the lack of uniform protocols and gaps in provision of medico legal care to survivors of sexual violence, recommendations of the JVC, the CLA 2013 and Protection of Children from Sexual Offences (POCSO) 2012, the Ministry of Health and Family Welfare (MoHFW) set up a national committee comprising of experts to formulate uniform protocol and guidelines for health professionals to respond to sexual violence. While doing so, international standards especially the World Health Organisation (WHO) Guidelines on medico legal care (2003) and Clinical and Policy Guidelines for responding to IPV and sexual assault (2013) were referred to. The committee has drawn from the available evidence from health sector interventions, legal and other expert opinions and voices of survivors. This is the most significant achievement as it is the first national directive for the health sector on responding to violence.

THE IMPLICATIONS OF THE LEGAL AMENDMENTS

The right to health care: The amendment to CLA 2013 recognises the right to health care for survivors of sexual violence thus compelling health professionals and health systems to make the shift from preoccupation with evidence collection to that of provision of comprehensive care and treatment. It further makes it binding on the health sector to respond to sexual violence without making any demand for a police complaint thus recognising rape a medico-legal emergency. Although the Supreme Court had observed in *State of Karnataka V Manjanna* (in the year 2000) that the medical examination of sexual violence victims should be done immediately and no hospital/doctor should delay examination for want of police requisition it was not seen in practice. Several instances where a victim/survivor was refused treatment as there was no police complaint made have been reported across the country. Even health professionals interviewed have said that rape survivors are always accompanied by the police thus making it clear that they do not recognise voluntary reporting. Section 357 C CrPC3 (Criminal Procedure Code) 2013 states that the hospital must immediately provide treatment² and care. This guarantees the right

CAPITAL

बलात्कार
करने वालोंको
फाँसी दो फाँसी दो

बला
करने व
फाँसी द

धोँसुरवा वैलफ





तकार
वालों को
फाँसी दो

REAL MAN
DONT RAPE

दामिनी
देश

हेयर स्याथटी
दामिनी देश

Photographer: Manish Jaju

to health care for all survivors of sexual violence as they can voluntarily report to a hospital instead of reporting to the police. This is a crucial shift from the past model of mere evidence collection in such instances to recognising the role of treatment and care by doctors. The CrPC further insists that such treatment should be free of cost. Not following this is an offence and a doctor could face imprisonment for a year and/or receive a fine.

Notwithstanding the guarantee of treatment in law, there have been several reports of rape survivors who were not provided with treatment on reporting to a hospital. These survivors then had to revisit a health facility for an abortion as emergency contraception was not given or had to seek treatment for burning micturition or infections (CEHAT 2013). Doctors mindlessly collect vaginal, oral and anal swabs during their examinations – often their foremost concern is to collect evidence of intercourse (Bhate-Deosthali, 2013) not to provide care and treatment to the survivor. In 2010 CEHAT filed an *intervention petition* in a Public interest litigation demanding gender sensitive protocols for medico-legal examination and the right to treatment and care for all survivors of sexual violence. But there was strong resistance from the health system. So deep-rooted are these biases that the experts on the committee were not able to appreciate scientific evidence and WHO guidelines that make a demand on the medical profession to move from evidence to care in their response to sexual assault.

Making redundant the pre-occupation with injuries: Explanation 2 to Section 375 on consent in the CLA 2013³, is critical for the medical profession as it notes that lack of resistance does not mean that a survivor of rape consented to the act of rape. The forensic medical textbooks as well as the medico-legal practice in India, is hinged on ‘finding injuries’ as signs of struggle/resistance. The preoccupation is so much that absence of injuries is often construed as “no signs of rape”. Many, mucosal injuries heal within hours but this is not understood. This is despite global evidence that only 33% of cases of sexual violence may show any injury. The absence of injuries could be due to various reasons – the victim being unconscious either due to trauma or being drugged/intoxicated, overpowered, and/or silenced with fear. Even the use of lubricant may decrease the risk of injury in sexual violence cases.

However even the latest editions of forensic science textbooks continue to propagate that rape cases must have signs of resistance. They further state that resistance offered depends upon the type of woman she is – her stage of development, whether she is a virgin or not and on the class of society to which she belongs. It emphasizes that doctors note the height, weight, general build and configuration of a victim as it

denotes capacity to resist the offender, e.g. in the 2010 Principles of Forensic Medicine Including Toxicology textbook, Nandy states that “[a] smart working and educated woman will be able to offer resistance while a timid, weak and shy woman is not expected to offer much resistance”⁴.

Stopping insensitive and unscientific practices: Although section 146 (3) of the Indian Evidence Act prohibits any mention or reference to previous sexual experience/ past sexual practices in the witness box, medical professionals continue to document these through comments on the size of the vaginal opening, old tears to the hymen, hymenal status and past obstetric history. In fact forensic medical textbooks are so biased that they provide information on how to differentiate between women who are and who are not habituated to sexual intercourse on mere examination of their breasts, vaginal opening, labia major and minora. The MoHFW has issued a directive to remove these practices from the medico-legal practice by issuing a protocol that is gender sensitive. The protocol disallows any mention of past sexual practices through comments on the size of vaginal introitus, elasticity of vagina or anus. Further, it bars comments of build/height-weight/nutrition or gait that perpetuate stereotypes about ‘victims’.

Roping in the private health sector: Both public and private health service providers are now obliged to provide prompt care to survivors of sexual assault. Not doing so is liable to a punishment of imprisonment or a fine or both. This makes it mandatory for all public and private hospitals to provide health care free of charge. This is really significant as the private health sector is a dominant provider of health care in India but unregulated. Until this amendment, cases of sexual violence were not treated in private hospitals but referred to public hospitals to avoid medico-legal procedures. The private health sector therefore will have to gear up and train themselves on how to use the national protocol and guidelines of 2014. This is indeed an important achievement as it provides choice to the survivor and increases access to health care services.

Recognising all forms of sexual violence: The amended definition of rape as it stands includes all forms of sexual violence thus recognising non peno-vaginal sexual assaults. For years the health sector has limited its medico-legal practice in rape examination to the legal definition of ‘peno-vaginal penetration’. The CEHAT intervention model found that only 45% of sexual violence cases have involved peno-vaginal penetration. The amended definition makes it absolutely essential for the dismantling of old

medico-legal practice as doctors will now have to listen to what the survivor is saying before they begin the examination and collection of evidence. They cannot treat the survivor's body merely as a site for the mindless collection of swabs.

Demystifying medical evidence: In cases of rape the courts and police have given a lot of credit to medical evidence without recognising the dynamics of sexual violence, in terms of the nature and circumstances in which it occurs. Globally, it is known that medico-legal evidence is rarely found in sexual violence. The fact that the definition of rape has been broadened will no doubt increase the number of cases where no medical evidence is present at all. This has to be clearly understood by doctors, the police, lawyers, the courts and all other relevant stakeholders.

OTHER IMPORTANT IMPACTS

Focus on history and relevant evidence collection: The dynamics of sexual abuse, e.g. the nature of the assault, the activities undertaken following the incident and the use of verbal threats/intimidation, are important factors that need to be considered. The national protocol focuses on recording the history of the incident instead of the old practice of the “History of (H/o) alleged rape” thus recognising various forms and dynamics of sexual violence, including activities that may lead to a loss of evidence.

The national protocol also provides guidance on evidence collection based on science and history. Swabs taken for evidence will test positive only if there has been intercourse with ejaculation. If the woman has bathed, urinated, used a douche or washed herself – which is often an immediate response following a sexual assault of this nature – such evidence is not likely to be found. If a condom has been used or ejaculation has taken place outside the body, then body swabs may not provide evidence. There could be a delay in reporting the crime, and a further delay in reaching a health facility. If these important facts are not accurately noted in the medico-legal form, negative findings may go against the survivor. Mere non-detection in a medical examination does not mean that sexual violence/crime did not occur.

Provision of psychological care: The MoHFW has issued standard treatment guidelines that are not limited to treatment of physical symptoms but also for addressing trauma. Health providers are therefore instructed to provide such services in privacy, to ensure confidentiality, be non-judgmental and supportive, and validate what the survivor is saying. They are expected to provide practical care and support, including legal, social and other services. If the health provider does not have the time then they

should ensure that someone at the health facility is available to do so. This is an important step for creating good quality services for survivors of violence within health settings.

Providing a reasoned medical opinion: Section 164 A of the CrPC (specific law for medical examination of the victim of rape) insists that doctors provide a reasoned opinion. The national guidelines give direction on how doctors can frame such an opinion based on the history, the clinical findings and the results of forensic evidence. The absence or presence of medical evidence (e.g. absence of semen due to use of a condom) needs to be explained.

CHALLENGES

Mandatory Reporting: Section 19 POCSO Act and Section 357 C CrPC instruct the doctor/hospital to mandatorily inform the police when they see a case of sexual violence. Section 21 POCSO Act and Section 166 B IPC3 (Indian Penal Code) prescribes punishment for not doing so. This provision in law is problematic for survivors who may want treatment but who may not be ready to report the offence to the police. It contradicts existing laws in the country:

Section 164A of CrPC asserts that an examination can only be carried out if there is informed consent by the victim/survivor. This applies to the consent of medico-legal examination, treatment, evidence collection and informing the police. But now, should a survivor not want the doctor to inform the police, the doctor faces a significant dilemma – caught between ethics and legal requirements. Section 357 Cr PC and rule 5 POCSO further specify that treatment must be provided and that no hospital can deny it. As the ‘right to treatment’ and ‘mandatory reporting’ (even without the informed consent of the survivor) are enshrined in the same section of the law, this jeopardises the right to health care for survivors who do not want to report to the police immediately or ever for that matter.

Further, the Medical Termination of Pregnancy Act 1971 recognizes the right of the woman to terminate a pregnancy when it is as a result of sexual violence and also guarantees that this information is kept private and confidential. The current mandatory reporting of sexual violence laws violates the right of the survivor as all pregnancies resulting out of rape have to be mandatorily reported to the police even if the survivor does not want to report the case.

The National Guidelines by the MoHFW do clarify that medical professionals can document informed refusal in cases where the victim/survivor requires treatment but refuses to report the case to the police. The documentation noting informed

refusal may be kept at the medical institution but the police still need to be informed of this.

DNA: The Criminal Procedure Code insists on the collection of DNA evidence in all cases of sexual violence. This requires some discussion as DNA has to be compared and profiled properly. If a perpetrator of sexual violence is not found, then there is nothing to compare the collected evidence to. Forensic Science laboratories are few and are overburdened with cases. Most facilities across the country have limited infrastructure to adequately preserve evidence and as a result collected evidence is often contaminated by the time it is tested. There are no defined standards or process of accreditation of forensic science laboratories. The relevance and insistence on DNA testing therefore needs more discussion.

RECOMMENDATIONS

The national guidelines issued by the MoHFW that lay down standard operating procedures for the care, treatment and rehabilitation of survivors of sexual violence must be made applicable to all public and private health facilities across the country. These guidelines address all issues including medical examination, psychosocial care, treatment, issues when dealing with children, disabled, transgender and intersex persons, persons with alternate sexual orientation, sex workers, and people facing caste, class or religion based discrimination. It is imperative that civil society activists, law practitioners etc demand that these be implemented across the country.

It is important that health professionals are trained on how to use these guidelines as academic medical education does not currently equip them on how to do so. To fulfill their obligations, health facilities need to set up the necessary infrastructure including the provision of free medicine. Last but not least, current forensic medical textbooks must delete medieval biases and be rewritten as a matter of priority.

We must recognise that the sensitive handling of survivors/victims can reduce self-blame and enhance their coping and rehabilitation. The health sector needs to foster effective multi- sectoral collaboration with the police, Child Welfare Committees, prosecution and the judiciary to provide essential services to survivors and deliver justice.

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Endnotes

- 1 The model is survivor centric and seeks informed consent for medico legal purposes, provides medical care and psychological first aid, and uses gender sensitive protocol for describing medico legal findings.
- 2 Rule 5 of the Protection of Children from Sexual Offences Act (POCSO) specifies that treatment should include care for Injuries, STD, HIV, Pregnancy testing, Emergency contraception, and psychological counselling.
- 3 It states: "Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity".
- 4 What do the forensic medicine textbooks say about sexual assault?: An analysis by CEHAT, available at <http://www.cehat.org/go/uploads/ResearchAreas/Roundtable%20at%20NLUD.pdf>

RAPIST को निलंबित करो
DEFEND RAVI
गोपनीय

तुम वारं

FUNLIS
ALL
CAPIS

DEMO
वारी

मैंने सोचा था कि
नारी को खाने के
बाद गोपनीय करारे
मालको से नहीं
आ सकते।
THANKS

भारतीय
संविधान
में
कड़वी - बहिष्
ना, ये मजबूत नहीं
आदि।

HANG
THEM
AT IN
GATE

HOME GARDEN
FOR PUBLIC
IN DTC

राज्या ने एक महिला पर
शारीक हमला करके उसे
साल धरती धरती है
क्या नून वी-वी-को समा
नही मिलनी-बहिष्?

जुर्म सबक
सजा भी-
LIVE HANGING

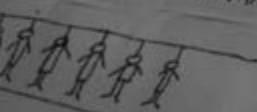
NO 144
WE WANT
302

NON-VIOLENCE
PROTEST
GOV. OF INDIA
- A SHAM

Juvenile Rape करने
ADULT CRIMINAL की तरह
PUNISHMENT
ACT, RULE
133A

मेरी भी एक बेटि है
इन्साफ के लिए मैं
अपनी बारी का
बैतजार नहीं कर सकता
I WANT JUSTICE TODAY

सकार के आवाज
कीन बोरिंग इन्साफ?



R.I.P SISTER
WE won't let your
Sacrifice get wasted
JUSTICE!

Photographer: Manish Jaju

CONCLUDING THOUGHTS

After decades of feminist advocacy and political activism to address sexual violence in our societies, one can observe some encouraging developments - gender based violence issues have made inroads into and settled onto political agendas not only nationally but also globally. By now political rhetoric and strategies of civil society at large acknowledge both the dimensions of violence in general, sexual violence and rape in particular and the needs to give this social peril dedicated attention.

As a result of increased awareness around issues of engendered violence, its manifestations and consequences, civil society and political actors subscribe to the view of deep social, political and economic transformation as the only sustainable and holistic response to this challenge. This consensus resulted in the adoption of policies, political strategies, programs and legislations intended to holistically shift gender imbalances and power relations. Examples in this regard reach from, implementation of quota systems towards increased participation and representation of women in all spheres and at all levels of society, to formalisation of sophisticated gender machineries institutionally tasked to ensure proper implementation of and oversee this process of transformation.

In line with this course of thought the main target of advocacy and activism on issues related to violence and its engendered manifestations has been the transformation of the criminal justice system. Using the words of one of the authors in this publication, “the state machinery structured to deliver justice”, has been modified as to better respond to crimes perpetrated on the grounds of sexual prejudice, hate and intolerance. This has yet again been confirmed by both the Indian and South African studies. Legislative mechanisms have been developed and introduced to specifically prosecute perpetrators and to seek some form of restoration for victims of sexual violence. Political administrations and other institutions have gradually introduced organs and systems, like specialised administrative units and courts. Specific legislations, including regulations and guidelines for law enforcement, have also been introduced to deal with these specific crimes. The introduction of these reforms, whilst introducing first steps towards engendering the juridical and justice system, would, at least on paper, provide victims of rape and sexual violence with formalised legal recourse and protection. In the context of India, for example, it is believed that law reforms introduced after December 2012 have empowered women to break the silence and thus more cases of rape have been reported.

Deep transformation is however unattainable without a shift in mindsets and attitudes, which in turn are shaped through, among others, public opinion and

discourse. The media plays a fundamental role in this regard. Every now and again, particularly in brutal cases such as those of Anene and Jyoti, we've seen the media prominently reporting and thus drawing public attention to violent crimes perpetrated against women. In South Africa the level of coverage around the Anene case was unprecedented for a crime against a poor, unknown young woman from a rural village. In India the media played a crucial role "asking tough questions to the local administration, the police department, national and state governments", placing the issue of sexual violence on the public-political agenda and holding politicians to account as illustrated in the contribution of journalist, Smruti Koppikar. Here the media played a pivotal role in not only sustaining public and political attention to these events and associated ripple effects, but also ensured public awareness and engagement on those.

The above illustrates some hard-fought achievements by feminists and gender activists worldwide.

We can look back at these with some degree of fulfilment and for a brief moment indulge in a sense of accomplishment. The bliss of these somewhat encouraging results however lasts just a short blink of any gender sensitive eye and mind.

The reforms introduced to the criminal justice system have not rendered the intended results to date, as evidenced by the daily experiences of violence that women endure. It either fails to perform, or is not supplied with enough resources to allow it to do so. A combination of these two factors operates in a vicious cycle preventing delivery of services to the extent required. The enacted legislation has neither proved to categorically deter perpetrators of crimes against women nor has it adequately guaranteed the level of protection required to positively transform women's lives. The body of regulations and guidelines for law enforcement has relative low impact on the performance of police, the courts and on the processes of prosecution. Insignificant conviction rates mirror this reality and expose both the poor quality of police work and the flaws in the criminal justice system. Police's often sloppy work results in weak investigations that fail to secure convictions. Biased, insensitive or gender blind courts fail to uphold the rule of law. Prosecutions are mostly inefficient and there is a general disregard for the needs of victims. These gaps in the system are therefore indirectly nurturing a culture of impunity.

Contributors in this publication have also pointed out that the media, instrumental as it may be to generate loud protest and keep the issues on the national and political conscience, is still driven by its own interests and specific operating rules. At times even steered by the individual "gut feeling" of the person who has the power to decide which content gets delivered to the public. Sexual violence and rape is usually treated and

reported as an event and there isn't a consistent examination of its roots and manifestations in the context of deeper underlying social dynamics that breeds a culture of sexual violence against women. So, despite some level of sensitivity to gender and women's issues by journalists, this is often not enough to change the sporadic pattern observed in the way the media picks up, covers and reports on these events.

In summary: What looks promising on paper and in rhetoric, fails to materialise and translate into concrete tangible changes to the persistent rates and brutality of gendered and sexual violence in our societies, which may provide evidence for the lack of impact of these measures. Anene and Jyoti have become icons in the discourse on violence against women. But their fates are neither sporadic nor unique for the two countries where they befell. The multitude of factors leading to this stalemate have been documented and explored at length in this publication and through other research. A fundamental aspect is that "... current responses do not address the structural nature of women's oppression and the role that sexual violence plays in it", as stated by Watson and Mentor-Lalu in their conclusion, hitting the nail on the head and taking us back to the drawing board.

While, as stated above, there is a certain degree of consensus on what needs to happen to reduce women's vulnerability and exposure to violence and rape, conversations around how that is to be achieved, often take place in silos or are too diffuse. Factors influencing the slow progress and the resulting lack of gender transformation are complex and manifold, but undoubtedly share the same roots. They breed from a system defined through male supremacy that tenaciously discriminates people on the basis of gender and sex and continuously reinforce notions of women's inferiority.

The culture of sexualised and brutal violence against women must always be understood in the historical, social and political contexts specific to the societies where these occur. However, one needs to be conscious that patterns of brutality and violence against women are often largely determined by dimensions of gender. Patriarchy and its powers are not only deeply entrenched in almost all spheres of society, determining public discourse, opinion and social relations but they are also moving targets that jeopardise any of the possible advances with regards to women's empowerment and gender equality.

Our quest should therefore be to reflect and interrogate current strategies, their related results and their relevance or lack thereof. As an example: despite evidence that the criminal justice system has not made much of an impact on the high levels of gender based violence, there is an over-reliance on the use of this mechanism as an entry point for strategising on potential solutions. In other words, whenever we

discuss and debate the challenges related to addressing the high rates of violence against women, our conversations almost always take us to an examination of the justice system and how it effectively targets the perpetrators and addresses the needs of victims of these crimes. Activists often spend a great deal of energy in advocating for the state to address identified challenges and gaps.

This does not mean that we should no longer devote attention to the criminal justice system. The criminal justice system and any of its inherent gaps must remain an important site for contestation. It provides an important rallying point for activism and advocacy. The state must be held accountable to its obligations and constitutional mandates. Advocacy for the improvement of support services to victims and survivors must also remain a predominant feature of campaigns. Although, in itself, these support systems cannot stop the increase in gender based violence, they provide an important source for the empowerment of victims.

As suggested by the reflection on the role of the media in this publication, civil society must also strengthen partnerships with this sector as to maximize its full potential as a driver of public awareness and discourse.

Unfortunately the approaches mentioned above, even if delivered to the highest efficiency, are not sufficiently preventive. We must therefore develop alternatives and mechanisms for action that meaningfully address the exposure and the hazards of sexual violence and are more preventive in nature. Our efforts must build on the achieved results yes, but, and perhaps more importantly, they have to consider lessons learnt from past experiences, with a view to shift our focus of action towards innovative approaches. This would enable us to deal with the mutating facets of patriarchy more effectively.

One strategy to achieve this entails the mobilisation of the whole of society. Increased public outrage and uprising against sexual violence, as in the Indian case, prompts shifts in the modus operandi of the state and in the way (mostly male) politicians speak about or on women's issues.

More importantly: massive mobilisation and collective rallying around violence against women transcends a realm traditionally destined to gender and feminist activism; it means a collectively assumed responsibility by the entire society. Only in this way can the foundations of a socially entrenched pervasive system like patriarchy be uprooted and a change to its holding structures truly effected.

Paula Assubuji

Human Rights Programme Manager

Heinrich Böll Foundation Southern Africa



NEXT CAN BE (sad face)

PROTEST IS ON
AT JANTAR MANTAR

@ 16 December Khamti

Photographer: Ramesh Lalwani

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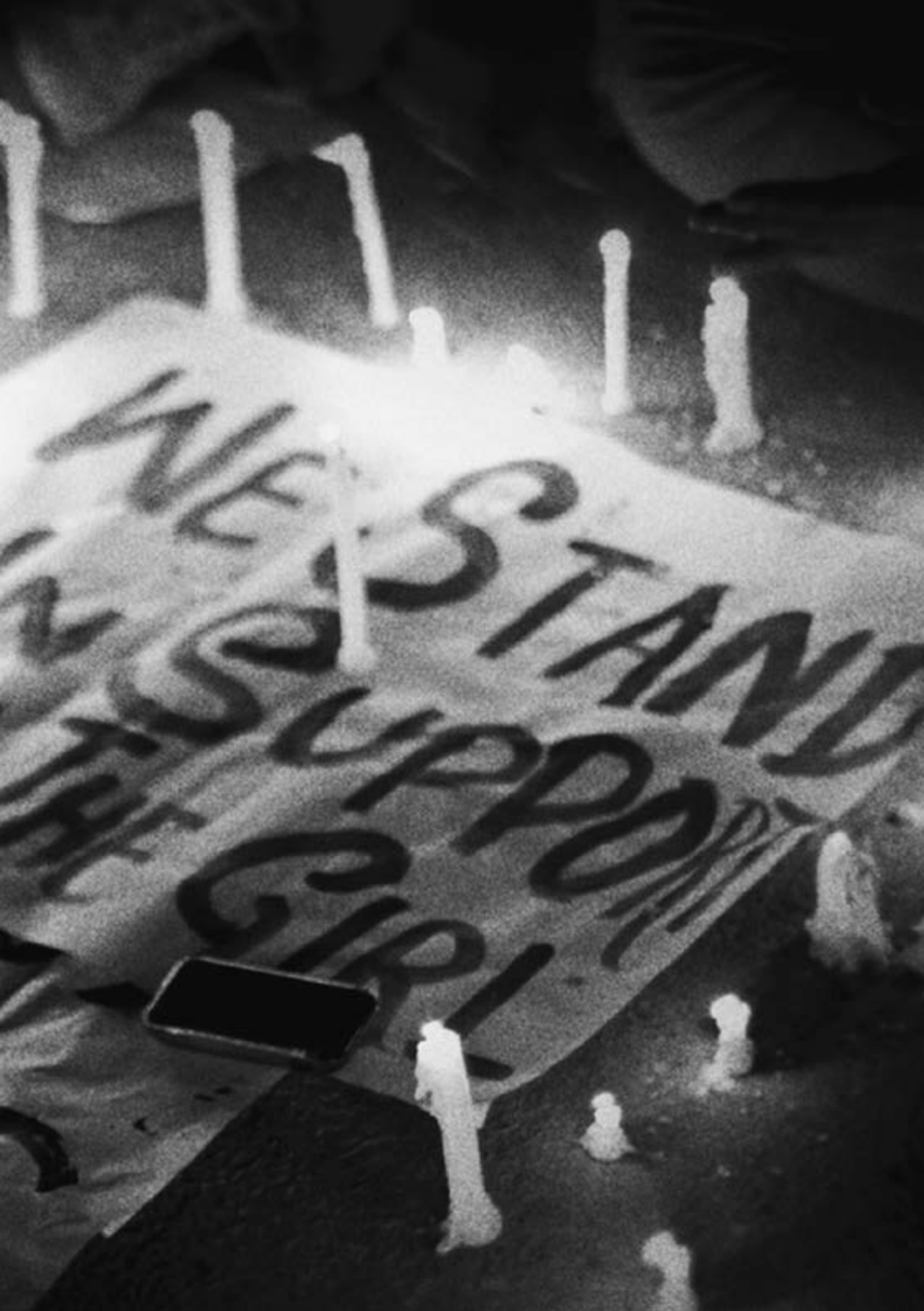
Heidi Swart has a background in social work and social research. She made a career change to journalism in 2010 when she was accepted for a cadetship at Independent Newspapers. This involved a year of in-house training with the Cape Argus and Independent's investigations unit, under the auspices of veteran investigator Ivor Powell. Following this, she worked at the Cape Community Newspapers for six months, a branch of Independent Newspapers. She completed a six-month internship at the Mail & Guardian's centre for investigative journalism, amaBhungane. She was awarded the 2012 Eugene Saldanha Fellowship for social justice reporting at the Mail & Guardian. She is currently lecturing in social work supervision and completing her Masters degree in social work research at the Stellenbosch University.

Melanie Verwoerd is a writer and commentator. In 1994, she was elected as a Member of Parliament for the ANC, the youngest female MP in the history of South Africa. She was re-elected in 1999 and appointed ambassador to Ireland in 2001. She was Executive Director of UNICEF Ireland from 2007-2011. Her best-selling memoir, "When We Dance" was published in Ireland in 2012 and in South Africa under the title, "The Verwoerd who toyi-toyied". Her book, "Our Madiba: Stories and reflections of those who met Nelson Mandela", was launched in 2014 by Archbishop Tutu.

Joy Watson is a feminist researcher with 20 years experience in feminist activism. Her research areas of specialization include women in politics, women and governance, violence against women and analyzing public policy and expenditure from a feminist perspective.



Photographer: Ravneet Oberoi



WE
STAND
WITH THE SUPPLY
GIRL